D-1.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6

Amend: R20-6-2301, R20-6-2305

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: November 12, 2024

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 20, Chapter 6

Amend: R20-6-2301, R20-6-2305

Summary:

This regular rulemaking from the Department of Insurance and Financial Institutions (Department) seeks to amend two (2) rules in Title 20, Chapter 6, Article 23 regarding Threshold Rate Review - Individual Health Insurance. Specifically, the Department is proposing the following amendments to the rules:

- R20-6-2301 (Applicability; Definitions) will be updated to correct the name of the Department which changed in 2020, to correct statutory references in the definition of "Health Insurance," and to change definitions for "Product" and "Rate Increase" as suggested in the Department's 2016 Five-Year Review Report.
- R20-6-2305 (Threshold Rate Increase Documentation Requirements) will be updated to add language to subsection (B) to include actuarial values, add three more submission requirements to reflect the impacts of geographic factors and variations, include the impact of changes within a single risk pool to all products or plans within the risk pool, and to include the impact of reinsurance and risk adjustment payments and changes as suggested in the Department's 2016 Five-Year Review Report.

The Department indicates the rules in this Article meets the requirements established under the Patient Protection and Affordable Care Act (Pub. L. 111-148) so that Arizona can be designated by the federal Centers for Medicare & Medicaid Services ("CMS") as a state that conducts effective review of individual health insurance rate increases. The Department indicates this designation allows Arizona, rather than the federal government, to have oversight over proposed health insurance rate increases in the individual market. The Department states the primary goal of this rulemaking is not to change any conduct of Health Insurers offering Individual plans in the Arizona market. Instead, it is an effort for the state to retain its authority to regulate these types of rates and not cede that authority to the federal government.

1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

The Department cites both general and specific statutory authority for these rules.

2. Do the rules establish a new fee or contain a fee increase?

This rulemaking does not establish a new fee or contain a fee increase.

3. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?

The Department indicates it did not review any study relevant to this rulemaking.

4. Summary of the agency's economic impact analysis:

The Department indicates that these regulations apply to insurers offering individual health insurance in the Arizona market. The Department states that the primary goal of this rulemaking is not to change any conduct of Health Insurers offering individual plans in the Arizona market. Instead, it is an effort for the state to retain its authority to regulate these types of rates and not cede authority to the federal government. The Department states that this article meets the requirements established under the Patient Protection and Affordable Care Act (Pub. L. 111-148) so that Arizona can be designated by the Centers for Medicare & Medicaid as a state that conducts effective review of individual health insurance rate increases. This designation allows Arizona, rather than the federal government, to have oversight over proposed health insurance rate increases in the individual market.

5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department believes the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking, which is to provide the Department with better information for reviewing rates.

6. What are the economic impacts on stakeholders?

The Department is not aware of any additional costs that are anticipated to be imposed on Health Insurers doing business in the individual market although the additional submission requirements may result in some additional costs to licensees.

7. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?

The Department indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register on August 2, 2024 and the Notice of Final Rulemaking now before the Council for consideration.

8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

The Department indicates it did not receive any public comments regarding this rulemaking.

9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates this Article governs rate review not the issuing of a permit. However, the Department also indicates A.R.S. § 20-216 specifically authorizes the Department to issue a certificate of authority to insurers doing business in Arizona if they meet statutorily specified criteria. As such, the Department states no general permit is used as the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute. *See* A.R.S. § 41-1037(A)(2). Council staff believes the Department is in compliance with A.R.S. § 41-1037.

10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department indicates rule R20-6-2301 references federal law in both subsection (A) pertaining to applicability of the Article, and in subsection (B) where the federal definition is adopted for some terms ("Federal medical loss ratio standard," "PHS Act," and "Threshold rate increase"). In addition, the definition for "Unreasonable rate increase" uses the federal medical loss ratio standard in subsection (a). The Department indicates this rule is not more stringent than the federal law.

The Department indicates rule R20-6-2305 makes no reference to federal law. Instead, it outlines the documentation required by the Department in order to assess the reasonableness of the assumptions used by the health insurer to develop the proposed rate increase, the validity of the historical data underlying the assumptions, and the health insurers data related to past projections and actual experience. As such, this rule is not more stringent than the federal law.

11. Conclusion

This regular rulemaking from the Department seeks to amend two (2) rules in Title 20, Chapter 6, Article 23 regarding Threshold Rate Review - Individual Health Insurance. Specifically, the Department is proposing the following amendments to the rules:

- R20-6-2301 (Applicability; Definitions) will be updated to correct the name of the Department which changed in 2020, to correct statutory references in the definition of "Health Insurance," and to change definitions for "Product" and "Rate Increase" as suggested in the Department's 2016 Five-Year Review Report.
- R20-6-2305 (Threshold Rate Increase Documentation Requirements) will be updated to add language to subsection (B) to include actuarial values, add three more submission requirements to reflect the impacts of geographic factors and variations, include the impact of changes within a single risk pool to all products or plans within the risk pool, and to include the impact of reinsurance and risk adjustment payments and changes as suggested in the Department's 2016 Five-Year Review Report.

The Department indicates the rules in this Article meets the requirements established under the Patient Protection and Affordable Care Act (Pub. L. 111-148) so that Arizona can be designated by the federal Centers for Medicare & Medicaid Services ("CMS") as a state that conducts effective review of individual health insurance rate increases. The Department indicates this designation allows Arizona, rather than the federal government, to have oversight over proposed health insurance rate increases in the individual market. The Department states the primary goal of this rulemaking is not to change any conduct of Health Insurers offering Individual plans in the Arizona market. Instead, it is an effort for the state to retain its authority to regulate these types of rates and not cede that authority to the federal government.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

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Arizona Department of Insurance and Financial Institutions
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Katie Hobbs
Governor

Barbara D. Richardson
Director

October 2, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions
Threshold Rate Review Rulemaking

Dear Chairperson Klein:

Please find enclosed the Final Rulemaking for the Threshold Rate Review rules being submitted by the Arizona Department of Insurance and Financial Institutions, Insurance Division ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

a. The close of record date for the Notice of Proposed Rulemaking was September 1, 2024.
b. This rulemaking fulfills a commitment made by the Department in its 2016 Five-Year Review Report, which was the Department's first review of this Article after its adoption in 2012 (18 A.A.R. 2721, October 26, 2012), and restated in the Department's 2021 Five-Year Review Report.
c. The rulemaking does not establish a new fee.
d. The rulemaking does not contain a fee increase.
e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.
f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.
g. No additional full-time employees are necessary to implement and enforce the rules. Consequently, no notification has been made to the Joint Legislative Budget Committee.
h. The following documents are also submitted to the Council with this cover letter:
    i. The Notice of Final Rulemaking;

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ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
iii. The general and specific statutes authorizing the rulemaking; and
iv. Permission from the Governor's Office to submit this Notice of Final Rulemaking required by A.R.S. § 41-1039(B).

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

Barbara D. Richardson

Barbara D. Richardson
Director

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – INSURANCE DIVISION

PREAMBLE

1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039 by the Governor on:

September 27, 2024

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

R20-6-2301	Amend
R20-6-2305	Amend

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

Authorizing statute: A.R.S. § 20-143(A)
Implementing statute: A.R.S. § 20-238; 45 C.F.R. 154.301(a)(5)

4. The effective date of the rule:

This rule shall become effective 60 days 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: TBD.

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 or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable.

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 or reasons 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 record of the final rule:

Notice of Rulemaking Docket Opening: 30 A.A.R. 2506, August 2, 2024, Issue 31,
File # R24-144

Notice of Proposed Rulemaking: 30 A.A.R. 2494, August 2, 2024, Issue 31,
File # R24-140

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

Name: Mary E. Kosinski
Address: Department of Insurance and Financial Institutions
100 N. 15th Ave., Suite 261
Phoenix, Arizona 85007-2630

Telephone: (602)364-3476
E-mail: mary.kosinski@difi.az.gov
Web site: https://difi.az.gov

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

The Arizona Department of Insurance and Financial Institutions – Insurance Division ("Department") is proposing changes to A.A.C. Title 20, Chapter 6, Article 23: Threshold Rate Review – Individual Health Insurance.

The changes being proposed by the Department stem from suggestions made in its 2016 Five-Year Review Report, which was the Department's first review of the Article after its adoption in 2012 (18 A.A.R. 2721, October 26, 2012). These proposals were restated in the Department's 2021 Five-Year Review Report.

This Article meets the requirements established under the Patient Protection and Affordable Care Act (Pub. L. 111-148) so that Arizona can be designated by the federal Centers for Medicare & Medicaid Services ("CMS") as a state that conducts effective review of individual health insurance rate increases. This designation allows Arizona, rather than the federal government, to have oversight over proposed health insurance rate increases in the individual market.

This rulemaking amends the following two rules in Article 23 (Threshold Rate Review – Individual Health Insurance) as follows:

- R20-6-2301 (Applicability; Definitions) will be updated to correct the name of the Department which changed in 2020, to correct statutory references in the definition of "Health Insurance," and to change definitions for "Product" and "Rate Increase" as suggested in the Department's 2016 Five-Year Review Report.
- R20-6-2305 (Threshold Rate Increase Documentation Requirements) will be updated to add language to subsection (B) to include actuarial values, add three more submission requirements to reflect the impacts of geographic factors and

variations, include the impact of changes within a single risk pool to all products or plans within the risk pool, and to include the impact of reinsurance and risk adjustment payments and changes as suggested in the Department's 2016 Five-Year Review Report.

The Department did not pursue two suggestions in the 2016 Five-Year Review Report and reiterated in the Department's 2021 Five-Year Review Report. The first was to add a definition for "Plan" to Section R20-6-2301. The Department determined that updating the definition for "Product" made an additional definition unnecessary. The second suggestion was to add language to subsection (A) of Section R20-6-2302 to include plans within a product. After discussion, the Department decided that the addition of this language is also unnecessary.

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:

Not applicable.

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:

Pursuant to A.R.S. § 41-1055(A)(1):

- The primary goal of this rulemaking is not to change any conduct of

Health Insurers offering Individual plans in the Arizona market. Instead, it is an effort for the state to retain its authority to regulate these types of rates and not cede that authority to the federal government. The Department articulated these proposed changes in its 2016 and 2021 Five-Year Review Reports for this Article.

Pursuant to A.R.S. § 41-1055(A)(2):

- The Department is not aware of any additional costs that are anticipated to be imposed on Health Insurers doing business in the individual market although the additional submission requirements may result in some additional costs to licensees. During the comment period, licensees were encouraged to submit information to the Department about potential impacts to their costs but no one submitted this information.

Pursuant to A.R.S. § 41-1055(A)(3):

- An economic, small business and consumer impact summary accompanies the submission of the Notice of Final Rulemaking to the Governor's Regulatory Review Council.

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:

Not applicable.

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:

Not applicable.

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:**

   Not applicable. Article 22 governs rate review not the issuing of a permit. A.R.S. § 20-216 authorizes the Department to issue a certificate of authority to insurers doing business in Arizona if they meet statutorily specified criteria. No general permit is used.

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:**

   A federal law is applicable to the Article. The rules in the Article are not more stringent than the federal law.
   For the rules the Department is amending in this rulemaking:
   Section R20-6-2301 references federal law in both subsection (A) pertaining to applicability of the Article, and in subsection (B) where the federal definition is adopted for some terms ("Federal medical loss ratio standard," "PHS Act," and "Threshold rate increase"). In addition, the definition for "Unreasonable rate increase" uses the federal medical loss ratio standard in subsection (a). This rule is not more stringent than the federal law.
   Section R20-6-2305 makes no reference to federal law. Instead, it outlines the documentation required by the Department in order to assess the reasonableness of the assumptions used by the health insurer to develop the proposed rate

increase, the validity of the historical data underlying the assumptions, and the health insurers data related to past projections and actual experience. This rule is not more stringent than the federal law.

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 rule:

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.

16. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – INSURANCE DIVISION

ARTICLE 23. THRESHOLD RATE REVIEW – INDIVIDUAL HEALTH INSURANCE

Section

R20-6-2301. Applicability; Definitions

R20-6-2305. Threshold Rate Increase Documentation Requirements

ARTICLE 23. THRESHOLD RATE REVIEW – INDIVIDUAL HEALTH INSURANCE

R20-6-2301. Applicability; Definitions

A. This Article applies to rates charged by health insurers for individual health insurance. This Article does not apply to rates charged by health insurers for the following:

1. Health insurance that a health insurer issues to an employer or to any group described in either A.R.S. § 20-1401 or A.R.S. § 20-1404(A), except health insurance issued to an association or its individual members as described in R20-6-2301(B)(7)(b);
2. Grandfathered health plan coverage as defined in 45 CFR 147.140; or
3. Health insurance that covers excepted benefits as described in section 2791(c) of the PHS Act, 42 U.S.C. 300gg-91(c).

B. In this Article, the following definitions apply:

1. "Department" means the Arizona Department of Insurance~~.~~ and Financial Institutions.
2. "Blanket disability insurance" has the meaning prescribed in A.R.S. § 20-1404(A).
3. "CMS" means the Centers for Medicare & Medicaid Services.

4. "Federal medical loss ratio standard" means the applicable medical loss ratio standard determined under 45 CFR 158, Subpart B.
5. "Health insurance" means disability insurance as defined in A.R.S. § 20-253, a health care plan as defined in ~~A.R.S. § 20-1051(5)~~ A.R.S. § 20-1051(4) and disability insurance or a health care plan offered by a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in ~~A.R.S. § 20-822(3).~~ A.R.S. § 20-822.
6. "Health insurer" means an insurer, as that term is defined in A.R.S. § 20-104, authorized to transact disability insurance in Arizona, a health care services organization as defined in A.R.S. § 20-1051(7) or a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
7. "Individual health insurance" means health insurance that a health insurer issues to either:
   a. An individual, to cover:
      i. The individual, or
      ii. The individual's dependents, or
      iii. The individual and the individual's dependents.
   b. An association or its individual members to cover the individual members and their dependents, and which the Department would regulate under A.R.S. Title 20, Chapter 6 as individual health insurance if the health insurer did not issue it to an association or individual members of an association.
8. "PHS Act" means Part A of Title XXVII of the Public Health Service Act, 42 U.S.C. Chapter 6A.
9. "Product" means ~~a package of health insurance benefits with a discrete set of rating and pricing methodologies that a health insurer offers as individual insurance in Arizona.~~ a discrete package of individual health insurance coverage benefits that are offered using a particular product network type (such as health maintenance organization, preferred provider organization, exclusive provider organization, point of service, or indemnity) within a service area that has its own

set of rating and pricing methodologies.

10. "Preliminary justification" means a justification that consists of the parts described in R20-6-2302(A).
11. "Rate increase" means an increase of the rates for an individual health insurance ~~product that a health insurer offers in Arizona that:~~ plan or plans within a product that:
    a. Results from a change to the underlying rate structure ~~of the product~~, and
    b. May result in premium changes ~~for the product~~.
12. "Secretary" means the Secretary of the United States Department of Health and Human Services.
13. "Threshold rate increase" means a rate increase that meets or exceeds an Arizona-specific threshold as noticed by the Secretary in 45 CFR 154.200, provided:
    a. The average increase for all enrollees weighted by premium volume meets or exceeds the applicable threshold; and
    b. If a rate increase that does not otherwise meet or exceed the Arizona-specific threshold meets or exceeds the Arizona-specific threshold when combined with a previous increase or increases during the 12-month period preceding the date on which the rate increase would become effective, then the rate increase must be considered to meet or exceed the Arizona-specific threshold and is subject to threshold rate review that shall include a review of the aggregate rate increases during the applicable 12-month period.
14. "Threshold rate review" means the review by the Department under this Article of a threshold rate increase.
15. "Unreasonable rate increase" means a rate increase that results in benefits that are not reasonable in relation to the premium the health insurer charges for the product. The following factors are relevant in determining whether a rate increase results in benefits that are unreasonable in relation to premium:
    a. The rate increase results in a projected medical loss ratio below the federal medical loss ratio standard after accounting for any adjustments allowable under federal law;

b. One or more of the assumptions on which the health insurer based the rate increase is not supported by sound actuarial reasoning, data and analysis;
c. The choice of assumptions or combination of assumptions on which the insurer based the rate increase is unreasonable;
d. The health issuer provides data or documentation that is incomplete, inadequate or otherwise does not provide a basis upon which the Department can determine the reasonableness of a rate increase; or
e. The increase results in premium differences between insureds within similar risk categories that are unfairly discriminatory under A.R.S. Title 20, Chapter 2, Article 6.

R20-6-2305. Threshold Rate Increase Documentation Requirements

A. For a threshold rate increase, a health insurer shall submit to the Department documentation that is sufficient to allow the Department to assess:
1. The reasonableness of the assumptions used by the health insurer to develop the proposed rate increase and the validity of the historical data underlying the assumptions, and
2. The health insurer's data related to past projections and actual experience.

B. To the extent applicable to the submission under review by the Department, the health insurer shall submit documentation that includes all of the following:
1. The impact of medical trend changes by major service categories;
2. The impact of utilization changes by major service categories;
3. The impact of cost-sharing changes by major service categories~~;~~, including actuarial values;
4. ~~The impact of benefit changes;~~ The impact of geographic factors and variations;
5. ~~The impact of changes in enrollee risk profile;~~ The impact of changes to all plans within the single risk pool product;
6. ~~The impact of any overestimate or underestimate of medical trend for prior year periods related to the rate increase;~~ The impact of reinsurance and risk adjustment

payments and changes;

7. ~~The impact of changes in reserve needs;~~ The impact of benefit changes;
8. ~~The impact of changes in administrative costs related to programs that improve health care quality;~~ The impact of changes in enrollee risk profile;
9. ~~The impact of changes in other administrative costs;~~ The impact of any overestimate or underestimate of medical trend for prior year periods related to the rate increase;
10. ~~The impact of changes in applicable taxes, licensing or regulatory fees;~~ The impact of changes in reserve needs;
11. ~~Medical loss ratio;~~ The impact of changes in administrative costs related to programs that improve health care quality;
12. ~~The health insurance insurer's capital and surplus; and~~ The impact of changes in other administrative costs;
13. ~~Other relevant documentation at the discretion of the Director.~~ The impact of changes in applicable taxes, licensing or regulatory fees;
14. Medical loss ratio;
15. The health insurer's capital and surplus; and
16. Other relevant documentation at the discretion of the Director.

C. A health insurer shall submit all documentation required under subsection (A) or (B) at the same time that:

1. The health insurer submits the preliminary justification required under R20-6-2302, or
2. The health insurer submits any new preliminary justification required under R20-6-2304(2)(b) and (c).

A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement
Title 20. Commerce, Financial Institutions, and Insurance
Chapter 6. Department of Insurance and Financial Institutions – Insurance Division

A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.

The Arizona Department of Insurance and Financial Institutions – Insurance Division ("Department") is proposing changes to A.A.C. Title 20, Chapter 6, Article 23: Threshold Rate Review – Individual Health Insurance.

The changes being proposed by the Department stem from suggestions made in its 2016 Five-Year Review Report, which was the Department's first review of this Article after its adoption in 2012 (18 A.A.R. 2721, October 26, 2012). These proposals were restated in the Department's 2021 Five-Year Review Report.

This Article meets the requirements established under the Patient Protection and Affordable Care Act (Pub. L. 111-148) so that Arizona can be designated by the federal Centers for Medicare & Medicaid Services ("CMS") as a state that conducts effective review of individual health insurance rate increases. This designation allows Arizona, rather than the federal government to have oversight over proposed health insurance rate increases in the individual market.

This rulemaking amends the following two rules in Article 23 (Threshold Rate Review – Individual Health Insurance) as follows:

- R20-6-2301 (Applicability; Definitions) will be updated to correct the name of the Department which changed in 2020, to correct statutory references in the definition of "Health Insurance," and to change definitions for "Product" and "Rate Increase" as suggested in the Department's 2016 Five-Year Review Report.
- R20-6-2305 (Threshold Rate Increase Documentation Requirements) will be updated to add language to subsection (B) to include actuarial values, add three more submission requirements to reflect the impacts of geographic factors and variations, include the impact of changes within a single risk pool to all products or plans within the risk pool, and to include the impact of reinsurance and risk adjustment payments and changes as suggested in the Department's 2016 Five-Year Review Report.

The Department did not pursue two suggestions in the 2016 Five-Year Review Report and reiterated in the Department's 2021 Five-Year Review Report. The first was to add a definition for "Plan" to Section R20-6-2301. The Department determined that updating the definition for "Product" made an additional definition unnecessary. The second suggestion was to add language to subsection (A) of Section R20-6-2302 to include plans within a product. After discussion, the Department decided that the addition of this language is also unnecessary.

A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.
These regulations apply to insurers offering individual health insurance in the Arizona market.

A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rule changes.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

(c) The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

The Department anticipates some additional costs to be imposed upon licensees due to the expanded documentation requirements being imposed by R20-6-205. However, the Department does not anticipate any effect on the revenues or payroll expenditures of employers who are subject to the rulemaking.

A.R.S. § 41-1055(B)(4): A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

The Department does not anticipate any impact on the private employment of an insurer offering individual health insurance in the Arizona market.

Likewise, the Department does not anticipate any impact on public employment in the Department.

A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rulemaking.

Not applicable. A health insurer offering individual plans is not a small business within the meaning of A.R.S. § 41-1001(25).

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The Department did not receive any information from licensees on administrative or other costs required for compliance with the proposed rulemaking. The Department anticipates that any administrative or other costs will be minimal.

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

Not applicable.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The Department does not expect any appreciable increase in either costs or benefits to private persons and consumers created by this rulemaking. The costs and benefits to private persons and consumers are expected to be the same as those identified during the original adoption of these rules.

A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.

No impact on state revenues is anticipated.

A.R.S. § 41-1055(B)(7): A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking which is to provide the Department with better information for reviewing rates.

A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

The rule is not based on any data.

a. Recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.
b. Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.
   i. "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents.
   ii. "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.
c. Offering for sale or selling any life insurance contract which includes a side fund:
   i. Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;
   ii. Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from year one to year ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and
   iii. Which by default diverts or transfers funds accumulated to the side fund to pay, reduce, or offset any premiums due.
d. Offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 4215, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 28 A.A.R. 687 (April 1, 2022), effective May 7, 2022 (Supp. 22-1).

ARTICLE 23. THRESHOLD RATE REVIEW – INDIVIDUAL HEALTH INSURANCE

R20-6-2301. Applicability; Definitions

A. This Article applies to rates charged by health insurers for individual health insurance. This Article does not apply to rates charged by health insurers for the following:
1. Health insurance that a health insurer issues to an employer or to any group described in either A.R.S. § 20-1401 or A.R.S. § 20-1404(A), except health insurance issued to an association or its individual members as described in R20-6-2301(B)(7)(b);
2. Grandfathered health plan coverage as defined in 45 CFR 147.140; or
3. Health insurance that covers excepted benefits as described in section 2791(c) of the PHS Act, 42 U.S.C. 300gg-91(c).

B. In this Article, the following definitions apply:
1. "Department" means the Arizona Department of Insurance.
2. "Blanket disability insurance" has the meaning prescribed in A.R.S. § 20-1404(A).
3. "CMS" means the Centers for Medicare & Medicaid Services.
4. "Federal medical loss ratio standard" means the applicable medical loss ratio standard determined under 45 CFR 158, Subpart B.
5. "Health insurance" means disability insurance as defined in A.R.S. § 20-253, a health care plan as defined in A.R.S. § 20-1051(5) and disability insurance or a health care plan offered by a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
6. "Health insurer" means an insurer, as that term is defined in A.R.S. § 20-104, authorized to transact disability insurance in Arizona, a health care services organization as defined in A.R.S. § 20-1051(7) or a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
7. "Individual health insurance" means health insurance that a health insurer issues to either:
   a. An individual, to cover:
      i. The individual, or
      ii. The individual's dependents, or
      iii. The individual and the individual's dependents.
   b. An association or its individual members to cover the individual members and their dependents, and which the Department would regulate under A.R.S. Title 20, Chapter 6 as individual health insurance if the health insurer did not issue it to an association or individual members of an association.
8. "PHS Act" means Part A of Title XXVII of the Public Health Service Act, 42 U.S.C. Chapter 6A.
9. "Product" means a package of health insurance benefits with a discrete set of rating and pricing methodologies that a health insurer offers as individual insurance in Arizona.
10. "Preliminary justification" means a justification that consists of the parts described in R20-6-2302(A).
11. "Rate increase" means an increase of the rates for an individual health insurance product that a health insurer offers in Arizona that:

a. Results from a change to the underlying rate structure of the product, and
b. May result in premium changes for the product.

12. "Secretary" means the Secretary of the United States Department of Health and Human Services.
13. "Threshold rate increase" means a rate increase that meets or exceeds an Arizona-specific threshold as noticed by the Secretary in 45 CFR 154.200, provided:
    a. The average increase for all enrollees weighted by premium volume meets or exceeds the applicable threshold; and
    b. If a rate increase that does not otherwise meet or exceed the Arizona-specific threshold meets or exceeds the Arizona-specific threshold when combined with a previous increase or increases during the 12-month period preceding the date on which the rate increase would become effective, then the rate increase must be considered to meet or exceed the Arizona-specific threshold and is subject to threshold rate review that shall include a review of the aggregate rate increases during the applicable 12-month period.
14. "Threshold rate review" means the review by the Department under this Article of a threshold rate increase.
15. "Unreasonable rate increase" means a rate increase that results in benefits that are not reasonable in relation to the premium the health insurer charges for the product. The following factors are relevant in determining whether a rate increase results in benefits that are unreasonable in relation to premium:
    a. The rate increase results in a projected medical loss ratio below the federal medical loss ratio standard after accounting for any adjustments allowable under federal law;
    b. One or more of the assumptions on which the health insurer based the rate increase is not supported by sound actuarial reasoning, data and analysis;
    c. The choice of assumptions or combination of assumptions on which the insurer based the rate increase is unreasonable;
    d. The health issuer provides data or documentation that is incomplete, inadequate or otherwise does not provide a basis upon which the Department can determine the reasonableness of a rate increase; or
    e. The increase results in premium differences between insureds within similar risk categories that are unfairly discriminatory under A.R.S. Title 20, Chapter 2, Article 6.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

R20-6-2302. Disclosure of Preliminary Justification

A. Preliminary Justification. For each threshold rate increase for each affected product, a health insurer shall submit to the Department and to CMS, on a form and in the manner prescribed by the Secretary in 45 CFR 154.215, a preliminary justification that contains all of the following:

1. Preliminary Justification Part I. A summary of the content of the threshold rate increase that includes:
    a. Historical and projected claims experience;
    b. Trend projections related to utilization, and service or unit cost;
    c. Any claims assumptions related to benefit changes;
    d. Allocation of the overall rate increase to claims and non-claims costs;
    e. Per enrollee per month allocation of current and projected premium; and
    f. Three year history of rate increases for the product associated with the rate increase.
2. Preliminary Justification Part II. A written description that justifies the rate increase and that contains a simple and brief narrative describing the data and assumptions the health insurer used to develop the rate increase, and includes the following:
    a. An explanation of the most significant factors causing the rate increase, including a brief description of the relevant claims and non-claims expense increases reported in subsection (A)(1); and
    b. A brief description of the overall experience of the policy, including historical and projected expenses, and loss ratios.

B. A health insurer may submit a single, combined preliminary justification that contains all the information in subsections (A)(1) and (2) for threshold rate increases that affect more than one product if the health insurer has aggregated the claims experience of all products to calculate the rate increases and the rate increases are the same for all products.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

R20-6-2303. Timing for Submission of Preliminary Justification

A. If R20-6-607 applies to a threshold rate increase, the health insurer shall submit its preliminary justification to the Department and to CMS on the date on which the health insurer files the rate increase request under R20-6-607.

B. If R20-6-607 does not apply to a threshold rate increase, the health insurer shall submit the preliminary justification to the Department and to CMS at least 60 days prior to the date the health insurer intends to implement the threshold rate increase in Arizona.

C. The Department shall provide access from its website to the Parts I and II of the Preliminary Justifications of the proposed rate increases that it reviews and have a mechanism for receiving public comments on those proposed rate increases.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

R20-6-2304. Response to Unreasonableness Determination

If the health insurer receives from CMS a notice that the Department has determined that the health insurer's threshold rate increase is unreasonable, the health insurer shall select one of the following three options:

1. Option to not implement the rate increase determined unreasonable. Within 30 days of receiving from CMS the Department's determination, the health insurer shall notify the Department and CMS that it will not implement the rate increase and request the Department to withdraw the rate increase request;
2. Option to implement a smaller rate increase than the rate determined unreasonable. Within 30 days of receiving from CMS the Department's determination, the health insurer shall notify the Department and CMS, on a form and in the manner prescribed by the Secretary, that it intends to implement a rate increase that is smaller than

the one determined unreasonable. One of the following shall apply to this option:
a. If the health insurer selects this option and the smaller rate increase is not a threshold rate increase, the smaller rate increase is not subject to this Article;
b. If the health insurer selects this option, and R20-6-607 applied to the rate increase the Department determined to be unreasonable, the health insurer shall revise the rate increase filing to reflect the smaller rate increase or file a new rate increase. If the smaller rate increase is a threshold rate increase, the health insurer shall submit a new preliminary justification on the date the health insurer revises the rate increase filing or files a new rate increase; or
c. If the health insurer selects this option, and R20-6-607 did not apply to the rate increase the Department determined to be unreasonable, and the smaller increase is a threshold rate increase, the health insurer shall submit to the Department and to CMS a new preliminary justification at least 60 days prior to the date the health insurer intends to implement the smaller increase in Arizona.

3. Option to implement the rate increase determined unreasonable. Within 10 business days after the health insurer either implements the rate increase that the Department determined unreasonable, or receives from CMS the Department's determination, the health insurer shall:
a. Submit, to the Department and to CMS, a final justification in response to the Department's determination. The information in the final justification shall be the same as the information submitted by the insurer under R20-6-2302(A)(1) and (2) in the preliminary justification supporting the rate increase; and
b. Prominently post on its website, on a form and in the manner prescribed by the Secretary under 45 CFR 154.230 the following information:
i. The Department's determination that the rate increase is unreasonable and Department's explanation of the Department's analysis of the relevant factors set forth in R20-6-2305(A)(1) and (2), and
ii. The health insurer's final justification for implementing the rate increase.
c. Continue to make the information in subsection (3)(b) available to the public on its website for at least three years.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

R20-6-2305. Threshold Rate Increase Documentation Requirements

A. For a threshold rate increase, a health insurer shall submit to the Department documentation that is sufficient to allow the Department to assess:
1. The reasonableness of the assumptions used by the health insurer to develop the proposed rate increase and the validity of the historical data underlying the assumptions, and
2. The health insurer's data related to past projections and actual experience.

B. To the extent applicable to the submission under review by the Department, the health insurer shall submit documentation that includes all of the following:
1. The impact of medical trend changes by major service categories;
2. The impact of utilization changes by major service categories;
3. The impact of cost-sharing changes by major service categories;
4. The impact of benefit changes;
5. The impact of changes in enrollee risk profile;
6. The impact of any overestimate or underestimate of medical trend for prior year periods related to the rate increase;
7. The impact of changes in reserve needs;
8. The impact of changes in administrative costs related to programs that improve health care quality;
9. The impact of changes in other administrative costs;
10. The impact of changes in applicable taxes, licensing or regulatory fees;
11. Medical loss ratio;
12. The health insurance insurer's capital and surplus; and
13. Other relevant documentation at the discretion of the Director.

C. A health insurer shall submit all documentation required under subsection (A) or (B) at the same time that:
1. The health insurer submits the preliminary justification required under R20-6-2302, or
2. The health insurer submits any new preliminary justification required under R20-6-2304(2)(b) and (c).

Historical Note
New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

ARTICLE 24. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

R20-6-2401. Definitions

The definitions in A.R.S. § 20-3111 and this Section apply to this Article.
1. "Allowed Amount" is the amount reimbursable for a covered service under the terms of the enrollee's benefit plan. The allowed amount includes both the amount payable by the insurer and the amount of the enrollee's cost sharing requirements.
2. "Alternative Arbitrator" is an individual who is mutually agreeable to the health insurer and health care provider to act as the arbitrator of a surprise out-of-network billing dispute. If the person is contracted with the State of Arizona to conduct arbitration proceedings, the provisions of that contract shall apply. Department staff may not serve as an Alternative Arbitrator.
3. "Amount of the enrollee's cost sharing requirements" means the amount determined by the insurer prior to the dispute resolution process to be owed by the enrollee for out-of-network copayment, coinsurance and deductible pursuant to the enrollee's health care policy.
4. "Arbitrator" has the same meaning as A.R.S. § 20-3111(2) and may include a mediator, arbitrator or other alternative dispute resolution professional who is contracted with the Department to arbitrate a surprise out-of-network billing dispute. Department staff may not serve as an Arbitrator.

Threshold Rate Review

Authorizing Statute

20-143. Rule-making power

A. The director may make reasonable rules necessary for effectuating any provision of this title.

B. The director shall make rules concerning proxies, consents or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g)(2)(G)(ii) of the securities exchange act of 1934, as amended, and as may be amended. Such rule shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934, as amended, or as may be amended.

C. All rules made pursuant to this section shall be subject to title 41, chapter 6.

D. In addition to any other penalty provided, wilful violation of any rule made by the director is a violation of this title.

Threshold Rate Review

Implementing Statutes

20-238. Health insurance; state regulation; rating areas; definitions

(Conditionally Rpld.)

A. The director, through the adoption of rules or other regulatory and administrative actions within the director's authority, shall ensure that this state retains its full authority to regulate policies, certificates, evidences of coverage and contracts of insurance that are issued or delivered by health insurers taking into consideration the enactment of the act.

B. Notwithstanding any other provision of this title, a health insurer subject to the act shall not issue a contract, policy, certificate or evidence of coverage or otherwise transact insurance if the coverage and benefits provided in the contract, policy, certificate or evidence of coverage are inconsistent with the applicable provisions of the act.

C. Except for coverage under individual and small group policies, certificates, evidences of coverage and contracts that are grandfathered as prescribed by 42 United States Code section 18011, the following rating areas are established and shall be used by all health insurers issuing individual and small group policies, certificates, evidences of coverage or contracts in this state:

1. Mohave, Coconino, Apache and Navajo counties.

2. Yavapai county.

3. La Paz and Yuma counties.

4. Maricopa county.

5. Pinal and Gila counties.

6. Pima and Santa Cruz counties.

7. Graham, Greenlee and Cochise counties.

D. For the purposes of this section:

1. "Act" means the patient protection and affordable care act (P.L. 111-148) as amended by the health care and education reconciliation act (P.L. 111-152) or any rules adopted pursuant to those acts.

2. "Health insurer" means a disability insurer, group disability insurer, blanket disability insurer, health care services organization, hospital service corporation, medical service corporation, dental service corporation, prepaid dental plan organization or hospital, medical, dental and optometric service corporation.

3. "Rating area" means an area within which a health insurer shall not vary rates based on geography.

Subpart C—Effective Rate Review Programs

§ 154.301 CMS's determinations of Effective Rate Review Programs.

(a) ***Effective Rate Review Program.*** In evaluating whether a State has an Effective Rate Review Program, CMS will apply the following criteria for the review of rates for the small group market and the individual market, and also, as applicable depending on State law, the review of rates for different types of products within those markets:

(1) The State receives from issuers data and documentation in connection with rate increases that are sufficient to conduct the examination described in paragraph (a)(3) of this section.

(2) The State conducts an effective and timely review of the data and documentation submitted by a health insurance issuer in support of a proposed rate increase.

(3) The State's rate review process includes an examination of:

(i) The reasonableness of the assumptions used by the health insurance issuer to develop the proposed rate increase and the validity of the historical data underlying the assumptions.

(ii) The health insurance issuer's data related to past projections and actual experience.

(iii) The reasonableness of assumptions used by the health insurance issuer to estimate the rate impact of the reinsurance and risk adjustment programs under sections 1341 and 1343 of the Affordable Care Act.

(iv) The health insurance issuer's data related to implementation and ongoing utilization of a market-wide single risk pool, essential health benefits, actuarial values and other market reform rules as required by the Affordable Care Act.

(4) The examination must take into consideration the following factors to the extent applicable to the filing under review:

(i) The impact of medical trend changes by major service categories.

(ii) The impact of utilization changes by major service categories.

(iii) The impact of cost-sharing changes by major service categories, including actuarial values.

(iv) The impact of benefit changes, including essential health benefits and non-essential health benefits.

(v) The impact of changes in enrollee risk profile and pricing, including rating limitations for age and tobacco use under section 2701 of the Public Health Service Act.

(vi) The impact of any overestimate or underestimate of medical trend for prior year periods related to the rate increase.

(vii) The impact of changes in reserve needs;

(viii) The impact of changes in administrative costs related to programs that improve health care quality;

(ix) The impact of changes in other administrative costs;

(x) The impact of changes in applicable taxes, licensing or regulatory fees.

(xi) Medical loss ratio.

(xii) The health insurance issuer's capital and surplus.

(xiii) The impacts of geographic factors and variations.

(xiv) The impact of changes within a single risk pool to all products or plans within the risk pool.

(xv) The impact of reinsurance and risk adjustment payments and charges under sections 1341 and 1343 of the Affordable Care Act.

(5) The State's determination of whether a rate increase is unreasonable is made under a standard that is set forth in State statute or regulation.

(b) ***Public disclosure and input.***

(1) In addition to satisfying the provisions in paragraph (a) of this section, a State with an Effective Rate Review Program must provide:

(i) For proposed rate increases subject to review, access from its Web site to at least the information contained in Parts I, II, and III of the Rate Filing Justification that CMS makes available on its Web site (or provide CMS's Web address for such information), and have a mechanism for receiving public comments on those proposed rate increases, no later than the date specified in guidance by the Secretary.

(ii) Beginning with rates filed for coverage effective on or after January 1, 2016, for all final rate increases (including those not subject to review), access from its Web site to at least the information contained in Parts I, II, and III of the Rate Filing Justification (as applicable) that CMS makes available on its Web site (or provide CMS's Web address for such information), no later than the first day of the annual open enrollment period in the individual market for the applicable calendar year.

(2) If a State intends to make the information in paragraph (b)(1)(i) of this section available to the public prior to the date specified by the Secretary, or if it intends to make the information in paragraph (b)(1)(ii) of this section available to the public prior to the first day of the annual open enrollment period in the individual market for the applicable calendar year, the State must notify CMS in writing, no later than five (5) business days prior to the date it intends to make the information public, of its intent to do so and the date it intends to make the information public.

(3) A State with an Effective Rate Review Program must ensure the information in paragraphs (b)(1)(i) and (ii) of this section is made available to the public at a uniform time for all proposed and final rate increases, as applicable, in the relevant market segment and without regard to whether coverage is offered through or outside an Exchange.

(c) CMS will determine whether a State has an Effective Rate Review Program for each market based on information available to CMS that a rate review program meets the criteria described in paragraphs (a) and (b) of this section.

(d) CMS reserves the right to evaluate from time to time whether, and to what extent, a State's circumstances have changed such that it has begun to or has ceased to satisfy the criteria set forth in paragraphs (a) and (b) of this section.

D-2.

ARIZONA COMMISSION FOR THE DEAF AND HARD OF HEARING
Title 9, Chapter 26, Articles 2 & 5

Amend: R9-26-201, R9-26-202, R9-26-203, R9-26-204, R9-26-205, R9-26-207, R9-26-501, R9-26-503, R9-26-505, R9-26-507, and R9-26-509

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: **November 19, 2024**

SUBJECT: **Arizona Commission for the Deaf and Hard of Hearing (ACDHH)**
Title 9, Chapter 26, Articles 2 and 5

Amend: R9-26-201, R9-26-202, R9-26-203, R9-26-204, R9-26-205, R9-26-207, R9-26-501, R9-26-503, R9-26-505, R9-26-507, and R9-26-509

Summary:

This regular rulemaking by the Arizona Commission for the Deaf and Hard of Hearing (Commission) seeks to amend eleven (11) rules in Title 9, Chapter 26, Articles 2 and 5 regarding Legal A and provisional interpreters' time frames for completing their five year performance examinations.

The proposed rule amendments partially arose out of a previous Five-Year Review Report (5YRR) approved by the Council in October 2022 to improve understandability and clarity of the rules. The proposed rule amendments also partially arose to address a set of emergency rules enacted in 2021 during the COVID-19 pandemic to provide extensions for Legal A and provisional interpreters to take their required performance examinations. The Commission amended these Sections twice in 2021. They were amended by an emergency rulemaking (See 27 A.A.R. 549, immediate effect on March 31, 2021).

As emergency rulemaking is only valid for 180 days (A.R.S. 41-1026(D)), the two Sections were amended again by regular rulemaking (See 27 A.A.R.1257, immediate effect on August 4, 2021). When the Sections as amended by regular rulemaking went into effect, the

Sections as amended by emergency rulemaking ceased to exist. The extensions under the previous rules expired in 2023, so the Commission seeks to remove the applicable portions of R9-26-501 and R9-26-507.

The Commission has requested a standard 60 day delayed effective date.

1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

The Commission cites both general and specific statutory authority.

2. Do the rules establish a new fee or contain a fee increase?

The amended rules do not increase any existing fees or create a new fee.

3. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?

The Commission stated in the preamble that it did not utilize or rely on any study.

4. Summary of the agency's economic impact analysis:

The rulemaking accomplishes minor changes to improve the clarity and understanding of the rules as a response to a 2022 five-year-review. Additionally, the rulemaking deletes temporary amendments made to the rules in response to the COVID-19 pandemic. The Commission believes the provision making an individual eligible for a voucher to purchase new telecommunications equipment when previously purchased equipment is no longer under warranty is most apt to have economic impact because it will allow individuals to obtain new equipment more frequently. Changes reducing or eliminating unnecessary or burdensome provisions will have important but minimal economic impact.

5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Commission believes the rulemaking is neither intrusive nor costly. As a result, no alternative methods were considered.

6. What are the economic impacts on stakeholders?

Individuals who participate in the telecommunications equipment program, interpreters, and the Commission are persons who will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

The rulemaking has no effect on other state agencies, political subdivisions, private or public employment, private persons and consumers, and state revenues.

7. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?

No, the final rules are not a substantial change from the proposed rules.

8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

The Commission stated that it received no comments regarding the rules in Article 2. The Commission received both written and oral comments regarding the rules in Article 5. The comments are detailed, along with the Commission's response, on Pages 3 through 16 of the Notice of Final Rulemaking. In total, the Commission received 18 written comments regarding differing aspects of the proposed rule amendments.

9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Commission stated that the licenses issued by the Commission to interpreters are not general permits as defined at A.R.S. § 41-1001. Under A.R.S. § 36-1946(3) the Commission is required to establish standards and procedures for the qualification and licensure of each classification of interpreters. The standards must include an assessment of each individual's education, examination, and work history (See A.R.S. § 36-1971(B)).

10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Commission states that the Americans with Disabilities Act applies to individuals who are deaf, hard of hearing, or Deafblind. However, no federal law is directly applicable to the subject of any rule in this rulemaking.

11. Conclusion

This regular rulemaking by the Commission seeks to amend eleven (11) rules in Title 9, Chapter 26, Articles 2 and 5 regarding Legal A and provisional interpreters' time frames for completing their five year performance examinations.

The proposed rule amendments partially arose out of a previous Five-Year Review Report (5YRR) approved by the Council in October 2022 to improve understandability and clarity of the rules. The proposed rule amendments also partially arose to address a set of emergency rules enacted in 2021 during the COVID-19 pandemic to provide extensions for Legal A and provisional interpreters to take their required performance examinations.

The Department is seeking a standard 60-day delayed effective date.

Council staff recommends approval of this rulemaking.

Katie Hobbs
Governor

Arizona Commission
for the deaf and the hard of hearing

Sherri L. Collins
Executive Director

100 N 15th Avenue . Suite 104 Phoenix, AZ 85007
acdhh.org

Ms. Jessica Klein, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

September 30, 2024

Re: A.A.C. Title 9. Health Services
Chapter 26. Commission for the Deaf and the Hard of Hearing

Dear Ms. Klein:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

A. Close of record date: The rulemaking record was closed on September 10, 2024, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

B. Relation of the rulemaking to a five-year-review report: The rulemaking relates to a 5YRR approved by the Council on October 4, 2022.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.

E. Immediate effective date: An immediate effective date is not requested.

F. Certification regarding studies: I certify that the preamble accurately discloses the studies the Board reviewed in its evaluation of or justification for the rules in this rulemaking.

G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:
1. Cover letter signed by the Executive Director;
2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
3. Economic, Small Business, and Consumer Impact Statement;
4. Public comments

Sincerely,

Sherri Collins
Executive Director

602-364-0990 TTY 602-542-3323 V 480-559-9441 VP 800-352-8161 V/TTY 602-364-0581 FAX info@acdhh.az.gov

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

PREAMBLE

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

   September 10, 2024

2. **Articles, Parts, and Sections Affected**

Articles, Parts, and Sections Affected	Rulemaking Action
R9-26-201	Amend
R9-26-202	Amend
R9-26-203	Amend
R9-26-204	Amend
R9-26-205	Amend
R9-26-207	Amend
R9-26-501	Amend
R9-26-503	Amend
R9-26-505	Amend
R9 26 507	Amend
R9-26-509	Amend

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

   Authorizing statute: A.R.S. §§ 36-1946(1), (2), and (3) and 36-1947(B)

   Implementing statute: A.R.S. §§ 36-1947 and 36-1971(B)

4. **The effective date for the rules:**

   As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State. 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 or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

      Not applicable

   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 or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

      Not applicable

5. Citation to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 29 A.A.R. 3587, Issue Date: November 17, 2023, Issue Number: 46, File Number: R23-227

Notice of Proposed Rulemaking: 29 A.A.R. 3561, Issue Date: November 17, 2023, Issue Number: 46, File Number: R23-224

Notice of Public Information: 29 A.A.R. 3807, Issue Date: December 15, 2023, Issue Number: 50, File Number: M23-65

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

Name: Carmen Green Smith

Title: Deputy Director

Address: Commission for the Deaf and the Hard of Hearing, 100 N. 15th Ave., Suite 104, Phoenix, AZ 85007

Telephone: (602) 542-3362

Fax: (602) 542-3380

E-mail: C.green@acdhh.az.gov

Website: acdhh.org

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

In a 5YRR approved by the Council on October 4, 2022, the Commission indicated it would make minor changes to improve the clarity and understandability of the rules. This rulemaking accomplishes that goal.

As a result of challenges from the Covid19 pandemic, in a 2021 rulemaking, the Board amended R9-26-501 and R9-26-507, to provide extra time for Legal A and provisional interpreters to take required performance examinations. The extra time provided has expired so the amended provisions are deleted in this rulemaking.

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:

Not applicable

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 Commission believes the provision making an individual eligible for a voucher to purchase new telecommunications equipment when previously purchased equipment is no longer under warranty is most apt to have economic impact because it will allow individuals to obtain new equipment more frequently. Changes reducing or eliminating unnecessary or burdensome provisions will have important but minimal economic impact.

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

No changes were made between the proposed and final rules.

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

The Commission received no comments regarding the rules in Article 2. The Commission received both written and oral comments regarding the rules in Article 5. Comments were received from Torrey Mansager, LaDonna Gabrielson, Deb Stone Haris, Jasmine Marin, Michelle Monahan, Matthew Brown, Ernest Willman, Robert Hann, Raymon Baesler, David Svoboda, Joni Horn, and Maria Tavormina. Each comment is addressed.

Comment	ACDHH analysis	ACDHH response
Even if we're going to allow other state certifications like BEI, we should require interpreters to have a bachelor's degree. Because many state certifications don't require proof of a bachelor's degree, individuals are able to avoid becoming fully competent and qualified. I believe a bachelor's in interpreting is the minimum someone needs to be a proficient entry-level interpreter. There's a reason RID requires a bachelor's. I don't think a bachelor's in anything non-interpreting related should be acceptable but the Commission could allow that, like RID does, to address the dearth of bachelor's level programs. When an individual graduates with an associate's, the individual is barely a competent language technician. It's not until additional course work is completed at the bachelor's level that an individual acquires a deeper understanding of morally defensible ethical decision making and moves toward becoming a practice professional. If we want to be considered	The Commission relies on certifying bodies for professional American Sign Language (ASL) interpreters to set minimum education standards (BEI=Associates degree and RID=Bachelors or Alternative pathway degree). The Commission does not intend to impose a more strict education requirement than the certifying bodies of RID and BEI because doing so could potentially reduce the pool of qualified interpreters in Arizona.	No change

professionals, our standards should reflect that.		
I am addressing the proposed change for a Class B Provisional license. The proposed changes address typographical errors and combine Class A and Class B Provisional license requirements under one heading. I would like to bring two concerns to the Commission's attention. First, based on the competency standards screened by the BEI Basic performance exam, interpreters holding this certificate are incorrectly classified as Generalist Interpreters by current licensure law. Second, there is need for specific guidance on settings where Class B Provisional Interpreters are qualified to work independently, without the support of a generally or legally licensed team interpreter. Currently, Generalist Interpreters holding a BEI Basic certificate have not proven through examination that they have interpreting skills for community assignments. Holders of a BEI Basic certificate meet minimum competency standards through examination to interpret only in K-12 and postsecondary educational settings. The BEI Basic performance test screens for terms and scenarios found in general lecture and teaching situations, and other educational contexts.	The Commission made a decision during the 2017 rule change to allow the BEI certification Basic level to be an acceptable certification that meets the minimum qualifications for a Generalist license in Arizona. This decision was based in part on the moratorium on certification tests delivered by RID, leaving the field without a way to grow because there were no testing options. The current classification and criteria for General licensees is not incorrect according to what the intentions of the Commission were during the 2017 rule changing process. The current rules define where a provisional B licensee can work "Class B provisional interpreter" means a provisional interpreter who is qualified to provide interpreting services without a team interpreter licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) and (b), except in a medical, mental health, platform or performance, or legal setting. A Class B provisional interpreter may provide interpreting services in a medical, mental health, or platform or performance setting only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class B provisional interpreter shall not	No change

Individuals awarded a BEI Basic certificate are not assessed in other community settings such as: medical, behavioral health, government, employment, finance, performance, public forums, or social service settings. Due to the current misclassification of BEI Basic certificate holders as Generalist Interpreters, they are working in these community settings under the Arizona rules. This is incongruent with the definition of the “Generalist Interpreter” classification found in R9-26-501 which states a “Generalist Interpreter” means an individual who provides interpreting in any community setting, except a legal setting, for which the individual is qualified by education, examination, and work history.” The BEI Basic performance exam does not meet the exam requirement for the Generalist Interpreter license. As such, the BEI Basic certificate should be removed from the list of acceptable examinations qualifying for the Generalist Interpreter license. It is my recommendation that interpreters currently holding a BEI Basic certificate are better classified as a Class B Provisional Interpreter under R9-25-503(2)(a) or R9-26-502(A)(1)(a) and (b) with additional definition and specific guidance on settings where they are qualified to work.	provide interpreting services in a legal setting.	

Currently, a Class B Provisional Interpreter may provide interpreting services in a medical, mental health, or platform/performance setting only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-502(A)(1)(a) and (b), and shall not provide interpreting services in a legal setting. Because the current rule defines only three settings where a Class B Provisional Interpreter must work with a licensed team interpreter, it does not provide adequate guidance to determine where they are qualified to interpret independently. As a result, a Class B Provision Interpreter may assume the interpreter is qualified to interpret independently. This perpetuates the risk for ineffective and unethical interpreting service provision in the settings listed above (medical, behavioral health, government, employment, finance, performance, public forums, or social service settings). The misclassification of BEI Basic certificate holders as Generalist Interpreters, and the limited definition of settings where Class B Provisional Interpreters require the support of a licensed team interpreter in the current rule could		

be harming the lives of Arizona's Deaf, DeafBlind and Hard of Hearing communities. I strongly urge the Board and Commission to evaluate the current proposal with these two concerns in mind and consider revisions based on these facts.		
It would be worthwhile to consider agencies that provide ASL/Eng interpreting services. Because spoken languages are not regulated in most areas, many spoken language agencies that expand to offer ASL/Eng interpreting services are not familiar enough with laws and regulations.	The Commission has no authority over licensing agencies providing spoken or ASL interpreting services. A.R.S. § 36-1946 does not allow the Commission to regulate business entities. This would require a statute change.	No change
I'm reaching out as an independent member of the ASL interpreting community. While I appreciate the current proposed changes to clarify the language in the rules, I believe there are certain issues that are far more impactful to the interpreting and Deaf communities that should be addressed. The first issue is the lack of oversight for referral agencies that coordinate ASL interpreting services. It is imperative that ACDHH continues to be the governing body over the ethics of individual ASL interpreters, however, that's only one part of the issues we see. With the increase of spoken language agencies offering	The Commission has no authority over licensing agencies providing spoken or ASL interpreting services. A.R.S. § 36-1946 does not allow the Commission to regulate business entities. This would require a statute change.	No change

ASL services, and considering the vast differences in industry standards between spoken and signed language interpreting, I feel it necessary for a government organization to be named as the watchdog for companies that hire and coordinate ASL interpreting services.		
I find it problematic that the ACDHH does not have jurisdiction to impose repercussions on unlicensed ASL interpreters. There currently are no penalties for non-licensed interpreters providing inadequate services to Deaf Arizonans, which is the entire point of having a licensure law. With the mass increase of Video Remote Interpreting, the blatantly unethical practices of nationwide VRI companies, and the national pool of VRI interpreters that are now providing services to our residents, it is of upmost important to allow ACDHH jurisdiction over unlicensed interpreters. I should also mention that we are the only state that I know of that doesn't have the ability to deliver repercussions to unlicensed interpreters.	The Commission has no authority over non-Arizona interpreters. A.R.S. § 36-1946 does not allow the Commission to regulate business entities. This would require a statute change.	No change
Please, consider extending ACDHH's jurisdiction when sanctioning interpreters— let them have the power to protect against unlicensed interpreters as well as nefarious agency practices.	The Commission has no authority over licensing agencies spoken or ASL. A.R.S. § 36-1946 does not allow the Commission to regulate business entities. This would require a statute change.	No change

Empower the community further by organizing a union to better protect and establish standards.		
The Commission should be able to deal harsher punishments for interpreters who repeatedly/severely violate the code of ethics There should be punishments given to out-of-state interpreters for interpreting without a license Is there anything to be done/brought against VRI agencies who send unlicensed out-of-state interpreters to interpret virtually in AZ? Is there anything that can be done as far as oversight over agencies?	The Commission has no authority over licensing agencies spoken or ASL. A.R.S. § 36-1946 does not allow the Commission to regulate business entities. This would require a statute change.	No change
The Commission should consider reciprocity for those licensed in other states. Those working full time in VRI (Video Remote Interpreting) are known to have more than 10 licenses at a time. It's a lot to manage.	A.R.S. § 36-1971(A) says an individual shall not practice as an interpreter for the deaf and the hard of hearing without a license issued by the Commission. This applies to those working only by VRI. An individual who works by VRI in Arizona must be licensed by the Commission.	No change
Interpreters who held a Legal License for a long time can't continue with a legal license because they must now have a legal certificate. They should be grandfathered and still keep a legal license because they were trained and worked for a long time. Because RID stopped offering	The 2017 licensure rule change required Legal A licensed interpreters who did not have their SCL certificate from RID and wished to stay in the Legal A category to obtain their CIC certificate from BEI within five years. COVID restrictions were implemented in March 2020. The	No change

SC:L, new interpreters who apply for a legal license will require legal certification from BEI or somewhere else which is fine.	five-year deadline to achieve certification was approaching for most professionals in 2021. The Commission requested permission and was granted authority to do a rulemaking. The 2021 rule change allowed an additional year (2022) to obtain the CIC certificate for Legal interpreters who were required to travel to Texas to take the BEI CIC test. The extended time has expired. The Commission stands behind the decisions made and believes the Legal A category interpreters have had sufficient time to meet the current requirements.	
It would be an ideal to have two separate listing for interpreters--one for Arizona residents and one for out-of-state interpreters. This way consumers can verified whether VRIs are licensed.	The Commission maintains a list of all interpreters who are licensed in Arizona. The list provides their first and last names. The Commission sees no benefit to adding the location of the licensed interpreters. The Commission has an online interpreter directory available to the community that lists the information the licensed interpreter wishes to share with the community. This directory posts interpreter information with their expressed consent and request.	No change
I believe ACDHH should receive the necessary funding to develop and manage a statewide mentorship program for new interpreters entering the field. The path to certification and licensure is arduous and offers little support. We are losing a huge percentage of well-trained interpreters by not	The Commission appreciates the feedback but funding and a mentorship program are outside the scope of the rulemaking.	No change

offering them the meaningful work experience needed to develop the skills necessary for certification. The interpreting field is shrinking at a time when demand is increasing…there are considerably more interpreters retiring or leaving the field than there are new interpreters starting their careers. The current model is unsustainable, yet the need for qualified ASL interpreters is ever-growing. I believe ACDHH should receive the funding necessary to provide a solution to this issue.		
I'd like to address the extreme shortage of Legal licensed interpreters in our state. I believe requiring BEI Advanced certification to receive a General license will incentivize more interpreters to take the BEI Court Interpreter Certification, due to BEI's own rules that require an interpreter to have a BEI Advanced certification to qualify for the CIC. I also think Arizona should examine reciprocity with other states' legal interpreter requirements and provide a path for those interpreters to be granted an Arizona Legal license. This will exponentially increase the number of legal interpreters on a national level that are able to provide services to the Deaf community in the justice system.	The 2017 rule change required Legal A licensed interpreters who did not have a SCL certificate from RID and wished to stay in the Legal A category to obtain a CIC certificate from BEI within five years. Due to the Covid pandemic, in March 2021 a rule change was made to allow extra time for Legal interpreters to obtain the required CIC certificate. The extended time has expired. The Commission stands behind the decisions made and believes the Legal A interpreters have had sufficient time to meet the current requirements. Valid certifications held needed to take the BEI CIC are the following: BEI Level III-IV, Advanced, Master OR RID CSC, CI/CT, RSC, CDI, NIC Advanced/Master. There is no need to take the advanced BEI test before taking the CIC.	No change

Currently, the BEI Basic is considered a qualifying credential for a General License in Arizona. I don't believe this to be adequate, as the BEI Basic was designed to qualify only K12 and post-secondary interpreters. It is a widely held belief that the BEI Advanced is more closely equivalent to the CASLI National Interpreter Certification. I propose offering those with BEI Basic certification a license that requires them to work alongside a General-licensed interpreter in all settings (except legal), with a 5-year opportunity to achieve the BEI Advanced certification and an Arizona General license.	The Commission decided during the 2017 rule change to allow the BEI certification Basic level to be an acceptable certification that meets the minimum qualifications for a Generalist license in Arizona. This decision was based, in part, on the moratorium on certification tests delivered by RID. This caused there to be no way to grow the number of interpreters because there were no testing options. The Commission acknowledges we may need to revisit the requirements to include the various tiers of advancement within the BEI structure to demonstrate progression in skills. The Commission will research this. It is interesting to note, the Commission has received an increased volume of complaints from consumers. These complaints are against interpreters who have RID certification and have been in the field for many years. In the last six years, we have had only one BEI-certified interpreter with a complaint compared with 22 RID-certified interpreters.	No change but the Commission will research including various tiers of advancement within the BEI structure to demonstrate progression in skills.
I see no reason why the proposed changes insofar as they impact Legal-licensed interpreters should not be approved as they merely eliminate the extension of time to earn the Legal-A license that was granted due to COVID. None of the language access personnel in the State courts with whom I shared the information expressed any	The Commission appreciates the comment and agrees.	No change

concerns about the proposed rulemaking for Legal-licensed interpreters to me.		
As both a law- and mental health-trained professional, it concerns me that steps are being taken to limit the number of legal interpreters who would be able to provide services to Deaf residents of Arizona. Acquaintances and clients have expressed concerns regarding the due process issues of not having interpreting services on a timely basis as well as the anxiety and distress of knowing there may be delays in the resolution of legal issues. It is rare that professional organizations and governing bodies choose not to grandfather in professionals who are already competently providing services during rule changes. I personally have seen grandfathering occur in several instances including here in Arizona when the Board of behavioral health changed from certification to licensure. I would strongly urge the Commission to reconsider their direction in this matter.	The 2017 licensure rule change required Legal A licensed interpreters who did not have their SCL certificate from RID and wished to stay in the Legal A category to obtain their CIC certificate from BEI. Due to the Covid pandemic, in March 2021, a rule change was made to allow extra time for those interpreters to obtain their CIC certificate. The extended time has expired. The Commission stands behind the decisions made and believes the Legal A category interpreters have had sufficient time to meet the current requirements.	No change
Before the 2017 rule making, Arizona Freelance Interpreting Services had 19 Legal A interpreters. Many with more than 20 years' experience. During Covid, many of the interpreters began working from home	The 2017 licensure rule change required Legal A licensed interpreters who did not have their SCL certificate from RID and wished to stay in the Legal A category to obtain their CIC certificate from BEI. Due to the	No change

providing VRI. The demand for ASL interpreting services in general increased. These two facts caused many interpreters to conclude they were busy enough and did not need to pursue additional certification or return to the community to provide onsite services. The Commission list of Legal A interpreters is long but many only provide VRI services, which may not be suitable for courtroom hearings. The BEI CIC is the only test currently available for legal testing and the closest testing facility is in TX and it can take up to 12 months from application to test results. With this system, Arizona will never be able to increase its number of Legal A interpreters to meet the demand of an increasing population. I am asking the Commission to grandfather those interpreters who held a Legal A before the rule change to ensure the deaf and hard of hearing communities receive accommodations and access to information.	Covid pandemic, in March 2021, a rule change was made to allow extra time for those interpreters to obtain their CIC certificate. The extended time has expired. The Commission stands behind the decisions made and believes the Legal A category interpreters have had sufficient time to meet the current requirements.	
I am in full support of the proposed changes. We've had plenty of time to know what the requirements are to work in the courts. I appreciate the fact you were flexible with the regulation during Covid. It's correct that a lot of people don't want to go	The Commission appreciates the comment.	No change

back into the community and work. But I don't see how changing the rules or adding grandfathering is going to change that. Maybe we need to look at other reasons interpreters prefer not to work in the courts. Maybe there's less incentive or the pay is not as great.		
I see no reason why the proposed changes insofar as they impact Legal-licensed interpreters should not be approved as they merely eliminate the extension of time to earn the Legal A license that was granted due to Covid, which has since expired. None of the language access personnel in the State courts with whom I shared the information expressed any concerns about the proposed rulemaking for Legal-licensed interpreters.	The Commission appreciates the comment.	No change

13. All agencies shall list any 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:

None

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:

The licenses issued by the Commission to interpreters are not general permits as defined at A.R.S. § 41-1001. Under A.R.S. § 36-1946(3) the Commission is required to establish standards and procedures for the qualification and licensure of each classification of interpreters. The standards must include an assessment of each individual's education, examination, and work history (See A.R.S. § 36-1971(B)).

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:

The Americans with Disabilities Act applies to individuals who are deaf, hard of hearing, or Deafblind. However, no federal law is directly applicable to the subject of any rule in this rulemaking.

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 rule:

None

14. 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

15. The full text of the rules follows:

Rule text begins on the next page.

TITLE 9. HEALTH SERVICES

CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

ARTICLE 2. TELECOMMUNICATIONS EQUIPMENT DISTRIBUTION PROGRAM

Section

R9-26-201. Definitions

R9-26-202. Eligibility

R9-26-203. Application Process

R9-26-204. Persons Authorized to Certify Need for Telecommunications Equipment

R9-26-205. Vouchers

R9-26-207. Confidentiality

ARTICLE 5. INTERPRETER LICENSURE AND REGULATION

Section

R9-26-501. Definitions

R9-26-503. Application for Generalist Interpreter License

R9-26-505. Application for Provisional Interpreter License

R9 26 507. License Renewal

R9-26-509. Procedures for Processing Applications; Time Frames

ARTICLE 2. TELECOMMUNICATIONS EQUIPMENT DISTRIBUTION PROGRAM

R9-26-201. Definitions

In addition to the definitions listed in A.R.S. § 36-1941, the following terms apply to this Article and A.R.S. § 36-1947:

"Applicant" means a person who applies to the Commission for telecommunications equipment.

"Audiologist" means a person who is licensed under A.R.S. § 36-1940 by the Arizona Department of Health Services.

"Deafblind" means a person who is either deaf or hard of hearing and:

Has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or

Has a field defect where the peripheral diameter of the visual field subtends an angular distance no greater than 20 degrees, or

Has a progressive visual loss with a prognosis of one or both of the conditions stated in the two preceding subsections.

"Director" means the Executive Director of the ~~Arizona~~ Commission ~~for the Deaf and Hard of Hearing~~.

"Hearing aid dispenser" has the same meaning as in A.R.S. § 36-1901.

"Hearing or speech-related disability" means a disability that prevents a person from hearing or articulating speech audibly or clearly, including deafness.

"Program" means the Telecommunications Equipment Distribution Program.

"Recipient" means a person who receives telecommunications equipment through the Program.

"Severely hearing or speech impaired" under A.R.S. § 36-1947(A) means a hearing or speech-related disability.

"Supplier" means a person that sells telecommunications equipment.

"Support service provider" means a trained individual who communicates visual, environmental, and social information to a DeafBlind individual to assist the DeafBlind individual to access the community and make decisions.

"Telecommunications equipment" means equipment that allows a person with a hearing or speech-related disability to access the telephone network.

"Vocational rehabilitation counselor" means ~~a Department of Economic Security employee~~ an individual who has a Master's degree in rehabilitation counseling from a university accredited by the National Council on Rehabilitation Education and who is certified by the Commission on Rehabilitation Counseling.

"Voucher" means the Commission's authorization of payment for telecommunications equipment.

R9-26-202. Eligibility

To be eligible for telecommunications equipment through the Program, a person shall:

1. Reside in Arizona;

2. Be a citizen of the U.S. or an alien whose presence in the U.S. is authorized under federal law;
3. Have a need for telecommunications equipment available through the Program due to a hearing or speech-related disability, as certified by an authorized person described in R9-26-203;
4. Have access to a telephone line; and
5. Not have used a voucher to purchase telecommunications equipment ~~within five years before the date of application under R9-26-203~~ that is still under warranty unless the individual's disability status ~~has~~ changed during ~~that time~~ the warranty period~~; and~~;
6. ~~Have returned to the Commission all telecommunications equipment that was distributed to the person by the Commission before June 30, 2002~~.

R9-26-203. Application Process

To apply for telecommunications equipment under the Program, an eligible person shall:

1. ~~Request~~ Obtain an application for participation in the Program from the Commission; and
2. Complete and return the application to the Commission with:
   a. Certification from an authorized person described under R9-26-204 that the applicant has a hearing or speech-related disability and needs the telecommunication equipment requested on the application;
   b. The eligible person's authorization for the Commission to use the information provided in the application to administer the Program; and
   ~~b.~~c. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law.

R9-26-204. Persons Authorized to Certify Need for Telecommunications Equipment

A. The following licensed professionals may certify an applicant's hearing or speech-related disability and need for the requested telecommunications equipment:

1. A dispensing audiologist licensed in accordance with A.R.S. Title 36, Chapter 17;
2. An audiologist licensed in accordance with A.R.S. Title 36, Chapter 17;
3. A physician licensed in accordance with A.R.S. Title 32, Chapter 13 or 17;
4. A physician assistant licensed in accordance with A.R.S. Title 32, Chapter 25;
5. A nurse practitioner licensed in accordance with A.R.S. Title 32, Chapter 15;
6. A speech-language pathologist licensed in accordance with A.R.S. Title 36, Chapter 17;
7. A hearing aid dispenser licensed in accordance with A.R.S. Title 36, Chapter 17; or
8. A vocational rehabilitation counselor as defined at R9-26-201.

B. By certifying a hearing or speech-related disability and need for the requested telecommunications equipment, the certifier attests that the certifier:

1. Is authorized to certify under subsection (A);
2. Has evaluated the applicant's hearing or speech-related disability to determine the applicant's need for the telecommunications equipment requested on the application; and
3. Has determined that the applicant will benefit from the telecommunications equipment requested on the application.

R9-26-205. Vouchers

A. The Commission shall issue to an eligible applicant an individually numbered voucher for a specified dollar amount for the applicant to purchase telecommunications equipment for which the applicant has a certified need. The applicant shall use the voucher only to purchase the telecommunications equipment specified on the voucher.

B. Vouchers are non-transferable and have no cash value.

C. A voucher expires 90 days after its issuance date.

D. If a voucher is lost or stolen, the applicant may ~~apply~~ contact program staff for a replacement voucher ~~by requesting, completing~~ and ~~returning to the Commission a replacement voucher form in which the applicant~~ shall attest under penalty of perjury that:

1. The original voucher was stolen or lost; and
2. If the original voucher is recovered, the applicant shall return the original voucher to the Commission within 30 days after the voucher is recovered.

R9-26-207. Confidentiality

A. ~~The~~ As specified under R9-26-203, the Commission shall use the information provided by ~~the Program's~~ Program applicants or recipients ~~in the course of the administration of the Program~~ solely to administer the Program.

B. ~~The~~ Except as provided under subsection (A), the Commission shall not disclose the name of an applicant for or recipient of telecommunications equipment without a written request for disclosure. Even with a written request for disclosure, the Commission shall not disclose personal identifying or protected health information regarding an applicant or recipient.

ARTICLE 5. INTERPRETER LICENSURE AND REGULATION

R9 26 501. Definitions

In addition to the definitions in A.R.S. §§ 12-242 and 36-1941, in this Article, the following definitions apply unless otherwise specified:

"ACCI" means American Consortium of Certified Interpreters, an organization that certifies interpreters at one of three levels: ACCI Generalist, ACCI Advanced, or ACCI Master.

"Accredited" means approved by a regional or national accrediting agency recognized by the U.S. Department of Education.

"Applicant" means an individual seeking an original or renewal license from the Commission.

"Application" means the documents, forms, and additional information required by the Commission to be submitted by or on behalf of an applicant.

"BEI" means Board for Evaluation of Interpreters.

"CASLI" means the Center for the Assessment of Sign Language Interpretation, which administers the examinations used by RID in national certification programs.

"CDI" means certified deaf interpreter, a certification issued by RID or BEI.

"CI" means certificate of interpretation, a certification issued by RID.

"CIC" means Court Interpreter Certification, a legal specialist certification issued by BEI.

"CLIP-R" means conditional legal interpreting permit--relay, a certification issued by RID to a deaf or hard-of-hearing interpreter or transliterator who works in a legal setting.

"Continuing education" means a workshop, seminar, lecture, conference, class, or other educational activity relevant to the practice of interpreting.

"CSC" means comprehensive skills certificate, a certification issued by RID.

"CT" means certificate of transliteration, a certification issued by RID.

"Deaf interpreter" means an individual who is deaf or hard of hearing and provides interpreting for deaf individuals with special language needs.

"EIPA" means educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

"Generalist interpreter" means an individual who provides interpreting in any community setting, except a legal setting, for which the individual is qualified by education, examination, and work history. A generalist interpreter provides interpreting in a legal setting only if appointed by a judge under A.R.S. § 12-242.

"IC" means interpretation certificate, a certification issued by RID.

"Intermediary Level III or V" means a certification issued by BEI for interpreters who are deaf or hard of hearing.

"Interpreter" means an individual who provides interpreting between American Sign Language and English.

"Legal interpreter" means an individual who is qualified by education, examination, and work history to provide interpreting in a legal setting.

"Class A legal interpreter" means a legal interpreter who provides interpreting in court proceedings or any other legal setting, as prescribed under A.R.S. § 12-242, and meets the certification requirement under R9-26-504(A)(1)(a). ~~An individual who is licensed by the Commission as a Class A legal interpreter on the date this Section takes effect, shall meet the certification requirement under R9-26-504(A)(1)(a) no later than the individual's renewal date, as specified in R9-26-507(A), in 2023.~~

"Class C legal interpreter" means a legal interpreter who provides interpreting in a legal setting, as prescribed under A.R.S. § 12-242, when teamed with a Class A legal interpreter and meets the certification requirement under R9-26-504(A)(1)(b).

"Class D legal interpreter" means a legal interpreter who meets the certification requirement under R9-26-504(A)(1)(c) and is either a deaf or hard-of-hearing interpreter or an oral transliterator.

“Legal training” means a structured program presented by the Commission, a court, Bar Association, law-enforcement association, RID, accredited institution, or comparable organization, providing information relevant to legal interpreting such as the following:

The requirements of A.R.S. § 12-242,

The structure of the judiciary system of this state,

The judiciary process of this state,

Administrative adjudicatory procedures,

Law enforcement procedures, or

Commonly used legal terms.

“Level III, IV, or V” means a certification issued by BEI.

“Licensee” means an interpreter who holds a current license issued under A.R.S. § 36-1974 and this Article.

“License year” means the days between the date of license issuance and the date of license expiration.

“Mentor” means an individual licensed under R9-26-503 or R9-26-504 who agrees to assist a provisional licensee to develop as an interpreter by occasionally observing the provisional licensee providing interpreting services and providing feedback.

“MCSC” means master comprehensive skills certificate, a certification issued by RID.

“NAD” means the National Association of the Deaf.

“NAD III (generalist),” means a certification issued by NAD.

“NAD IV (advanced),” means a certification issued by NAD.

“NAD V (master),” means a certification issued by NAD.

“NIC” means National Interpreter Certification.

“NIC Advanced” means a certification issued by NAD-RID.

“NIC Certified” means a certification issued by NAD-RID.

“NIC Master” means a certification issued by NAD-RID.

“OC:B” means oral certificate: basic, a certification issued by BEI.

“OC:C” means oral certificate: comprehensive, a certification issued by BEI.

“OIC” means oral interpreting certificate, a certification issued by RID in one of three categories: comprehensive, spoken to visible, or visible to spoken.

“Oral transliteration” means to facilitate communication between an individual who is deaf or hard of hearing and an individual who hears by using inaudible speech and natural gestures to convey a message to the deaf or hard-of-hearing individual and understanding and verbalizing the message and intent of the speech and mouth movements of the individual who is deaf or hard of hearing.

“OTC” means oral transliteration certificate, a certification issued by RID.

“Platform or performance setting” means an environment involving an appearance by a designated speaker or performers, typically on a raised surface.

“Provisional interpreter” means an individual who is qualified by education, examination, and work history to provide interpreting while pursuing RID, NAD, or BEI certification.

“Class A provisional interpreter” means a provisional interpreter who provides oral transliteration and is working towards certification by RID, NAD, or BEI. A Class A provisional interpreter shall not provide interpreting services in a legal setting.

“Class B provisional interpreter” means a provisional interpreter who is qualified to provide interpreting services without a team interpreter licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) and (b), except in a medical, mental health, platform or performance, or legal setting. A Class B provisional interpreter may provide interpreting services in a medical, mental health, or platform or performance setting only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class B provisional interpreter shall not provide interpreting services in a legal setting.

“Class C provisional interpreter” means a provisional interpreter who is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class C provisional interpreter shall not provide interpreting services in a legal setting.

“Class D provisional interpreter” means a provisional interpreter who is deaf or hard of hearing and is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or (b) or R9-26-504(A)(1)(a) through (c). A Class D provisional interpreter shall not provide interpreting services in a legal setting.

“Qualified interpreter” means an individual licensed under this Chapter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary required by the interpreting situation.

“RID” means Registry of Interpreters for the Deaf.

“RSC” means reverse skills certificate, a certification issued by RID.

“SC:L” means specialist certificate: legal, a certification issued by RID.

“SC:PA” means specialist certificate: performing arts, a certification issued by RID.

“TC” means transliteration certificate, a certification issued by RID.

<u>“State-issued certification” means a certification issued by a state regulatory board to an individual who demonstrates knowledge, skills, and abilities that meet or exceed the minimum needed by an American Sign Language interpreter to perform competently in a specified setting.</u>

“Team” means two or more licensed interpreters, at least one of whom is licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), providing interpreting for an individual or group of individuals during a single interpreting session.

"Trilingual Advanced or Master" means a specialist certification issued by BEI for interpreters of Spanish, English, and American Sign Language.

"Unprofessional conduct," as used in A.R.S. § 36-1976, means:

Violation of the NAD-RID Code of Professional Conduct, 2005, which is incorporated by reference and available from the Commission and RID, 333 Commerce Street, Alexandria, VA 22314, or www.rid.org. The material incorporated includes no later edition or amendment; or

Failure to comply with a provision of A.R.S. Title 36, Chapter 17.1, Article 2 or this Chapter.

"VRI" means video remote interpreting, a service that uses video telecommunication devices to provide interpreting between or among individuals who are at one or more locations separate from the interpreter.

R9 26 503. Application for Generalist Interpreter License

A. To apply for a generalist interpreter license, an applicant shall:

1. Comply with R9-26-502; and
2. Submit a photocopy of current documentation showing that the applicant holds one or more of the following certifications:
   a. Hearing interpreters: NAD III, IV, or V; RID CI, CSC, CT, IC, MCSC, RSC, SC:L, SC:PA, or TC; NIC Certified, Advanced, or Master; or BEI Levels III, IV, or V, Basic, Advanced, Master, Trilingual Advanced, Trilingual Master, CIC, or other certification deemed appropriate by the Commission;
   b. Deaf interpreters: RID CDI, CLIP-R, or SC:L; BEI Intermediary Level III or V, CDI, or other certification deemed appropriate by the Commission; or
   c. Oral interpreters: RID OIC or OTC, BEI OC:B or OC:C, or other certification deemed appropriate by the Commission.

B. If an applicant's documentation of certification expires during the licensure process, the Commission shall not complete the licensure process until the applicant submits current documentation of certification.

R9 26 505. Application for Provisional Interpreter License

A. To apply for a provisional interpreter license, an applicant shall comply with R9-26-502 and submit documentation of the following:

1. Education. The following hours of participation in an interpreter-preparation training program offered by an accredited college or university or approved by RID, NAD, or BEI:
   a. Class A or D provisional license: 40 hours; and
   b. Class B or C provisional license: 80 hours;
2. Examination. Pass the written portion of the RID, NAD, or BEI examination; and
3. Work experience. The following hours of interpreting for which a license is not required under A.R.S. § 36-1971:
   a. Class A provisional license: 24 hours;
   b. Class B provisional license:
      i. A score of at least 4.0 on the EIPA performance test; or
      ii. ACCI certification; or

iii. A state-issued certification or certificate of competency in good standing;

c. Class C provisional license: 80 hours; and

d. Class D provisional license: 40 hours.

B. In addition to the documentation required under subsection (A), an applicant for a Class B provisional license shall:

1. Have a letter submitted directly to the Commission by an individual licensed under R9-26-503 or R9-26-504 indicating that the individual agrees to:

   a. Act as a mentor to the applicant if the applicant is granted a provisional license;

   b. Observe the provisional licensee providing interpreting services at least once each month;

   c. Provide feedback to the provisional licensee following each observation; and

   d. Provide 30-days' notice to the provisional licensee and the Commission before terminating the mentoring relationship; and

2. Submit a letter to the Commission indicating that if the applicant is issued a provisional license, the applicant agrees to:

   a. Make and maintain a record of each time the mentor observes the applicant and a summary of the feedback provided;

   b. Make the record maintained under subsection (B)(2)(a) available to the Commission annually at license renewal; and

   c. Provide 30 days' notice to the Commission and the mentor before terminating the mentoring relationship; or

3. Submit a letter to the Commission indicating that if the applicant is issued a provisional license, the applicant agrees to:

   a. Team with an individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b) for at least eight hours each month;

   b. Maintain a journal that records the dates on which and the name of the licensee with whom teaming was done and a summary of any feedback provided; and

   c. Make the journal maintained under subsection (B)(3)(b) available to the Commission annually upon license renewal.

C. The Commission shall accept the following documentation of the criteria in subsection (A):

1. Education. A photocopy of documents showing that the applicant completed the hours required under subsection (A)(1);

2. Examination. A photocopy of the letter provided by RID, NAD, or BEI indicating that the applicant passed the written portion of the RID, NAD, or BEI examination;

3. Work experience.

   a. One or more letters, each of which is signed by an individual or a representative of an entity for whom the applicant provided interpreting, indicating:

      i. The name of the applicant,

      ii. The dates on which interpreting was provided, and

      iii. The hours of interpreting provided by the applicant; or

b. One or more paystubs, each of which indicates:
   i. The name of the applicant,
   ii. The job title of the applicant,
   iii. The dates on which interpreting was provided by the applicant, and
   iv. The hours of interpreting provided by the applicant, and
c. For an applicant for a Class B provisional license:
   i. A photocopy of the letter provided by EIPA indicating the applicant's score on the EIPA performance test,
   ii. A photocopy of the applicant's ACCI certificate, or
   iii. A photocopy of the applicant's state-issued certification or certificate of competency in good standing.

R9 26 507. License Renewal

A. Renewal of a generalist or legal interpreter license.

1. A generalist or legal interpreter license expires one year after the license is issued. To continue to practice as a generalist or legal interpreter, the licensee shall, no more than 60 days before the expiration date, submit to the Commission a license renewal application form that provides the following information about the licensee:
   a. Full name;
   b. Social Security number;
   c. Home or business address;
   d. E-mail address;
   e. Home, business, or mobile telephone number;
   f. The start and end dates of the applicant's current certification cycle with RID, NAD, or BEI, as applicable;
   g. Name of any state or country in which the licensee is currently licensed or certified to practice as an interpreter, the license or certificate number, date issued and date of expiration, and a statement whether the license or certificate is or has been the subject of discipline during the previous year and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;
   h. A statement of whether the licensee has been denied a license or certificate to practice as an interpreter by a licensing authority during the previous year and if the answer is yes, a complete explanation of the denial including date, name of the interpreter licensing authority, and reason for denial;
   i. A statement of whether the licensee has been convicted of a felony or of an offense involving moral turpitude in this or any other jurisdiction during the previous year and if the answer is yes, a complete explanation of the charge and place and date of conviction;
   j. A statement of whether the licensee has been adjudicated insane or incompetent during the previous year and if the answer is yes, a complete explanation including date and place of adjudication;

k. A statement of whether the applicant's NAD, RID, or BEI certification lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;

l. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;

m. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any;

n. A statement of whether the applicant's NAD, RID, or BEI certification was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any, and if discipline was imposed, a statement of whether the notice required under R9-26-518 was submitted to the Commission;

o. A statement of whether the applicant completed any continuing education during the previous year and if so, the number of hours completed; and

p. A statement signed by the licensee verifying the truthfulness of the information provided and affirming that the licensee will comply with the NAD-RID Code of Professional Conduct.

2. In addition to the license renewal application form required under subsection (A)(1), the generalist or legal licensee shall submit or have submitted on the licensee's behalf:

a. A photocopy of current documentation showing the applicant's NAD, RID, or BEI certification is in good standing. If the licensee's documentation expires during the renewal process, the Commission shall not complete the license renewal process until the licensee submits a photocopy of current documentation;

b. If the answer to any item in subsections (A)(1)(g) through (A)(1)(m) is yes, a copy of any relevant order; and

c. The fee required under R9-26-508.

3. If a generalist or legal licensee fails to comply with subsections (A)(1) and (A)(2) on or before the license expiration date, the license expires. The former licensee may renew the expired license by complying with subsections (A)(1) and (A)(2), and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.

4. If an expired license is not renewed under subsection (A)(3), the former licensee may obtain a license only by applying as a new applicant.

B. Renewal of a provisional interpreter license.

1. A provisional interpreter license expires one year after the date of issuance.

2. To continue to practice as a provisional interpreter, the licensee shall, no more than 60 days before the expiration date, submit to the Commission a license renewal application form that provides the information specified under subsection (A)(1).

3. In addition to the license renewal application form required under subsection (B)(2), the provisional licensee shall submit or have submitted on the licensee's behalf:

a. If the answer to any item in subsections (A)(1)(h) through (A)(1)(m) is yes, a copy of any relevant order;

b. Documentation required under R9-26-510(C) that demonstrates compliance with the continuing education requirement in R9-26-510; and

c. The fee required under R9-26-508;

d. If a Class B provisional licensee wishes to renew the Class B provisional license, letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3); and

e. If a Class C provisional licensee wishes to renew the Class C provisional license, an affirmation that the licensee has provided and will continue to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b); or

f. If a Class C provisional licensee wishes to move to a Class B provisional license:

i. Letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3), and

ii. Evidence required under R9-26-505(C)(3)(a) or (b) showing at least 500 hours of work experience earned while working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), or

iii. A score of at least 4.0 on the EIPA performance test.

4. If a provisional licensee fails to comply with subsections (B)(2) and (3) on or before the license expiration date, the license expires. Unless the expired provisional license has previously been renewed under subsections (B)(2) and (3), the former licensee may renew the expired license by complying with subsections (B)(2) and (3) and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.

5. The Commission shall not issue a provisional interpreter license to an interpreter for more than five years over the interpreter's lifetime ~~except that if an interpreter is unable to pursue RID, NAD, or BEI certification because the testing necessary for certification is unavailable due to the COVID-19 pandemic, the Commission shall renew the provisional interpreter license of any interpreter who:~~

~~a. Complies fully with this subsection;~~

~~b. Held a valid provisional interpreter license in its final renewal year on December 30, 2020; and~~

~~c. Obtains certification by RID, NAD, or BEI no later than the interpreter's renewal date, as specified in subsection (B)(1), in 2023~~.

C. If the documentation previously submitted under R9-26-502(B)(4) was a limited form of work authorization issued by the federal government, an applicant for license renewal shall submit evidence that the work authorization has not expired.

D. The Commission shall require a licensee to submit the information required under R9-26-502(B)(5) every five years so an updated photograph is used in the identification badge required under R9-26-515.

R9-26-509. Procedures for Processing Applications; Time Frames

A. For the purpose of A.R.S. § 41-1073, the Commission establishes the following licensing time frames:

1. Administrative completeness review time frame: 30 days;
2. Substantive review time frame: 60 days; and
3. Overall time frame: 90 days.

B. The administrative completeness review time frame listed in subsection (A)(1) begins on the date the Commission receives a license application or license renewal application. During the administrative completeness review time frame, the Commission shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Commission shall specify in the notice what information is missing.

C. An applicant with an incomplete application shall supply the missing information within 30 days from the date of the notice. Both the administrative completeness review and overall time frames are suspended from the date of the Commission's notice until the date that the Commission's office receives all missing information.

D. Upon receipt of all missing information, the Commission shall notify the applicant that the application is complete. The Commission shall not send a separate notice of completeness if the Commission grants or denies a license within the administrative completeness review time frame in subsection (A)(1).

E. The substantive review time frame listed in subsection (A)(2) begins on the date of the Commission's notice of administrative completeness or on expiration of the time listed in subsection (A)(1).

F. If the Commission determines during the substantive review time frame that additional information is needed, the Commission shall send the applicant a comprehensive written request for the additional information. The applicant shall supply the additional information within 60 days from the date of the request. Both the substantive review and overall time frames are suspended from the date on the Commission's request until the date the Commission office receives the additional information.

G. If an applicant needs additional time in which to respond under subsection (C) or (F), the applicant shall submit a written notice of a 120-day extension to the Commission before expiration of the time to respond ~~that includes the date by which the applicant will submit the information. The applicant shall establish an extension date that is no more than 120 days from the date~~ established under subsection (C) or (F).

H. If an applicant fails to submit information within the time provided under subsection (C) or (F) or as extended under subsection (G), the Commission shall close the applicant's file. An applicant whose file is closed and who later wishes to be licensed, shall apply anew.

I. Within the time listed in subsection (A)(3), the Commission shall:

1. Grant a license to an applicant who meets the requirements in A.R.S. § 36-1973 and this Article, or
2. Deny a license to an applicant who does not meet the requirements in A.R.S. § 36-1973 or this Article.

J. If the Commission denies a license, the Commission shall send the applicant a written notice explaining:

1. The reason for the denial with citations to supporting statutes or rules,
2. The applicant's right to appeal the denial and have a hearing,
3. The time for appealing the denial, and
4. The applicant's right to request an informal settlement conference.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT[1]
TITLE 9. HEALTH SERVICES
CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

1. Identification of the rulemaking:

The Commission for the Deaf and the Hard of Hearing is established at A.R.S. § 36-1942. The Commission is to act as a bureau of information to the deaf, hard of hearing, deafblind, and speech-impaired, state agencies and institutions providing services to these communities, and governmental and community agencies and programs. The Commission operates a telecommunications equipment distribution program as authorized under A.R.S. § 36-1947. The rules made under this authority are amended in this rulemaking. The Commission is required by A.R.S. § 36-1946 (1) through (3) to make rules regarding licensure of interpreters for the deaf and the hard of hearing. Some of the rules made under this requirement are also amended in this rulemaking. The Commission is assisted by a staff of 21 FTEs. During the last year, the Commission collected $9,331 in fees and was appropriated $4,644,000.

Article 2, which addresses the telecommunications equipment distribution program, is amended to make an individual eligible for a telecommunications equipment voucher if a previous voucher was used to purchase equipment that is no longer under warranty. Because most telecommunications equipment has a warranty of fewer than five years, the amended rules mean an individual will be eligible for a voucher for new equipment sooner than under the current rules. The Commission also is simplifying the procedure for replacing a lost or stolen voucher. Under the amended rules, an applicant has only to contact program staff and attest that the original voucher was lost or stolen.

Article 5, which addresses interpreter licensure and regulation, is amended to delete the expired Covid19-related provision providing extra time for a Legal A or provisional interpreter to take a required performance examination. The Commission is also easing a regulatory burden by allowing an applicant to provide notice of a time extension rather than requesting an extension.

As required under A.R.S. § 41-1039(A), authorization to proceed with this rulemaking was obtained from Andrew Sugrue in an e-mail dated June 21, 2023. Approval to submit this

[1] If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided by Mr. Sugrue on September 10, 2024.

a. The conduct and its frequency of occurrence that the rule is designed to change:
Until the rulemaking is completed, an unnecessary provision regarding the time in which some interpreters must take a performance examination and burdensome provisions regarding a time extension, replacing a lost or stolen voucher, and becoming eligible for a new equipment voucher will remain.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:
It is not good government to have unnecessary or burdensome provisions in rule.

c. The estimated change in frequency of the targeted conduct expected from the rule change:
When the rulemaking is completed, the unnecessary and burdensome provisions will be deleted or amended. The Commission will have addressed the issues identified in the 5YRR approved by the Council on October 2, 2022.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:
The Commission believes the provision making an individual eligible for a voucher to purchase new telecommunications equipment when previously purchased equipment is no longer under warranty is most apt to have economic impact because it will allow individuals to obtain new equipment more frequently. Changes reducing or eliminating unnecessary or burdensome provisions will have important but minimal economic impact.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:
Name: Carmen Green Smith, Deputy Director
Address: Commission for the Deaf and the Hard of Hearing
100 N. 15th Ave., Suite 104
Phoenix, AZ 85007
Telephone: (602) 542-3362
Fax: (602) 542-3380
E-mail: C.green@acdhh.az.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Individuals who participate in the telecommunications equipment program, interpreters, and the Commission are persons who will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

Funding for the telecommunications equipment program is provided under A.R.S. § 42-5252(B). During the last year, $120,000 was deposited in the telecommunication fund for the deaf and $117,077was distributed to applicants. During the last year, 141 individuals applied to the Commission to participate in the program. The Commission currently has 9,259 telecommunication devices placed with participating individuals. The Commission estimates that as a result of the rule change making it likely that equipment can be replaced more often, the cost of the program will increase by $15,000 annually. Because the Commission provides program participants with vouchers they use to purchase telecommunications equipment, vendors of telecommunications equipment indirectly benefit from the program and as a result of this rulemaking, may have increased benefit.

During the last year, no applicant applied to the Commission to have a lost or stolen voucher replaced. As a result of the rule change, both applicants and the Commission will have reduced regulatory burden to replace a lost or stolen voucher.

Six individuals benefitted from the extension provided under the Covid19-related provision allowing extra time for a Legal A or provisional interpreter to take a required performance examination. Three of these were Legal A interpreters and three were provisional interpreters. This extra time expired automatically under the terms in the rules. The expired provisions are deleted in this rulemaking.

During the last year, 13 interpreter applicants requested an extension of time in which to submit information to the Commission. Under the rule amendments, a request will not be necessary. Rather, the applicant will simply provide notice of an extension.

The Commission incurred the cost of this rulemaking and will incur the cost of implementing and enforcing the rule changes. The Commission will have the benefit of rules that no longer contain expired provisions and that reduce regulatory burdens.

5. Cost-benefit analysis:

a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
The Commission is the only agency directly affected by the rulemaking. The Commission will not need a new full-time employee to implement and enforce the rule provisions.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:
No political subdivision is directly affected by the rulemaking.

c. Costs and benefits to businesses directly affected by the rulemaking:
Interpreters are businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.

6. Impact on private and public employment:
The rulemaking will have no impact on private or public employment.

7. Impact on small businesses[2]:

a. Identification of the small business subject to the rulemaking:
Interpreters are small businesses subject to the rulemaking.

b. Administrative and other costs required for compliance with the rulemaking:
Statute requires that an interpreter be licensed and the license be renewed. As required by statute, the Commission established the education, examination, and work history required for individuals to be licensed as a legal, generalist, or provisional interpreter. An individual must meet the established standards and is required to apply for licensure and pay a fee.

c. Description of methods that may be used to reduce the impact on small businesses:
All interpreters are small businesses. As a result, it is not possible to reduce the economic impact of rules on small businesses and still fulfill the Commission's regulatory responsibilities.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
Private persons and consumers are not directly affected by the rulemaking. However, deaf and hard of hearing Arizonans will be indirectly affected by the Commission's efforts to ensure all interpreters are qualified.

9. Probable effects on state revenues:
The rulemaking will have no effect on state revenues.

[2] Small business has the meaning specified in A.R.S. § 41-1001(23).

10. Less intrusive or less costly alternative methods considered:

The Commission believes the rulemaking is neither intrusive nor costly. As a result, no alternative methods were considered.

As of February 1, 2024

36-1941. Definitions

In this chapter, unless the context otherwise requires:

1. "Commission" means the commission for the deaf and the hard of hearing.

2. "Deaf" means a person who cannot generally understand speech sounds with or without a hearing aid when in optimal listening conditions.

3. "Deafblind" means a person who is deaf or hard of hearing, who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance not greater than twenty degrees, or a progressive visual loss having a prognosis leading to one or both of these conditions, and for whom the combination of the hearing and vision loss described affects the person's ability to communicate and receive environmental information both visually and auditorily.

4. "Hard of hearing" means a person who has a degree of hearing loss greater than 40dB PTA-2, but less than 85dB PTA-2, in the better ear.

5. "Interpreting" means translating or transliterating English concepts to any necessary specialized vocabulary used by a consumer or translating a consumer specialized vocabulary to English concepts.

6. "Necessary specialized vocabulary" includes American sign language, English based sign language, cued speech and oral interpreting.

7. "PTA-2" means the average of hearing levels at one thousand, two thousand and four thousand Hz.

36-1942. Commission for the deaf and the hard of hearing

A. The commission for the deaf and the hard of hearing is established consisting of the following members appointed by the governor:

1. One member who is selected from the department of economic security.

2. One member who is selected from the Arizona state schools for the deaf and the blind at Tucson or the Phoenix day school for the deaf.

3. One member who is a dispensing clinical audiologist licensed pursuant to chapter 17 of this title.

4. One member who is a hearing aid dispenser licensed pursuant to chapter 17 of this title.

5. Four members who are deaf persons.

6. One member who is a licensed sign language interpreter.

7. One member who is a parent of a deaf person.

8. Four members who are hard of hearing.

B. Commission members serve three years and may be reappointed once. The governor may remove a commission member for cause.

C. The commission shall meet at least four times a year at the call of the chairman, who shall be selected by the commission from among its membership.

D. Members of the commission are not eligible to receive compensation but are eligible to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2.

36-1943. Executive director; duties

A. Subject to title 41, chapter 4, article 4, the commission shall appoint an executive director who serves at the pleasure of the commission. Subject to title 41, chapter 4, article 4, the commission may employ other employees as necessary, determine their compensation pursuant to section 38-611 and prescribe their powers and duties. With the approval of the commission, the executive director may contract for professional, technical and clerical services necessary to carry out functions of the commission.

B. The executive director shall be a trained professional experienced in problems of the deaf and the hard of hearing and skilled in the use of manual communication, commonly referred to as sign language, and may be either a deaf person, a person who is hard of hearing or a person with normal hearing. The executive director shall assist the commission to implement its programs and activities and to implement this chapter. The executive director shall not be a commission member. The executive director is eligible to receive compensation set by the commission within the range determined pursuant to section 38-611.

36-1944. Duties

The commission shall act as a bureau of information to the deaf, the hard of hearing and the deafblind, state agencies and institutions providing services to the deaf, the hard of hearing and the deafblind, local agencies of government and other public or private community agencies and programs. In this capacity, the commission shall:

1. Inform the deaf, the hard of hearing and the deafblind of the availability of the programs and activities of the commission and other services available for the deaf, the hard of hearing and the deafblind at all levels of government.

2. Develop and foster a framework for consultation and cooperation with the rehabilitation services bureau of the department of economic security and with all institutions represented on the commission.

3. Study issues relating to the deaf, the hard of hearing and the deafblind, review the administration and operation of the various programs for the deaf, the hard of hearing and the deafblind in this state and make recommendations concerning these problems and programs to the several agencies and institutions represented on the commission as it deems necessary.

4. Submit an annual report to the governor and the legislature concerning its findings and recommendations.

5. Review the problems of the deaf, the hard of hearing and the deafblind as they relate to the need for effective and appropriate auxiliary aids in public places.

6. Review and compile information on the development of acoustical technology for the hard of hearing and advocate the use of this technology if it deems appropriate.

7. Make recommendations to state agencies, political subdivisions and institutions on how to meet the needs of the deaf, the hard of hearing and the deafblind.

8. Make recommendations to the legislature regarding statutory changes needed:

(a) To develop and support statewide newborn child hearing loss screening programs.

(b) To develop and update assessment standards that optimize the language acquisition and literacy development of deaf and hard of hearing newborns, infants and children.

36-1945. Commission for the deaf and the hard of hearing fund; gifts and donations; annual report

A. The commission for the deaf and the hard of hearing fund is established consisting of fees, penalties and any legislative appropriations. The commission shall administer the fund. Monies in the fund are subject to legislative appropriation.

B. The commission may accept and spend federal monies and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of a fiscal year.

C. The commission shall submit an annual report to the governor on all monies accepted by the commission pursuant to subsection B, the names of the donors and the respective amounts contributed and the amount of all disbursements from the fund.

36-1946. Interpreters for the deaf and the hard of hearing; certification; licensure

The commission shall:

1. Adopt rules necessary to achieve the purposes of section 12-242.

2. By rule, classify interpreters for the deaf and the hard of hearing based on the level of interpreting skills acquired by that person.

3. By rule, establish standards and procedures for the qualification and licensure of each classification of interpreters.

4. Help establish partnerships with colleges and universities in this state to provide interpreter and support service provider training and degree programs.

5. By rule, establish standards and procedures to certify sign language teachers to teach American sign language.

6. Beginning on September 1, 2007, license interpreters for the deaf and the hard of hearing pursuant to article 2 of this chapter.

36-1947. Telecommunication devices for the deaf and the hearing and speech impaired; fund

A. The commission shall establish and administer a statewide program to purchase, repair and distribute telecommunication devices to residents of this state who are deaf or severely hearing or speech impaired and establish a dual party relay system making all phases of public telephone service available to persons who are deaf or severely hearing or speech impaired.

B. The commission may adopt administrative procedures, rules, criteria and forms to establish and administer the telecommunication device program under this section.

C. Telecommunication devices furnished by the commission under this section remain the property of this state. A person who receives a telecommunication device from the commission under this section is liable for the loss of or damage to the device. The commission may impose a civil penalty against the person in an amount equal to the cost of the device or the amount of damage done to the device. If a

person objects to the imposition of a civil penalty, the commission shall conduct a hearing as prescribed in title 41, chapter 6, article 10. Monies collected by the commission under this subsection shall be deposited in the telecommunication fund for the deaf established by subsection D of this section.

D. The telecommunication fund for the deaf is established. The commission shall administer the fund. Monies in the fund shall be derived from the telecommunication services excise tax revenues distributed pursuant to section 42-5252, subsection B. Interest accruing to the fund shall be deposited in the fund. Monies in the fund are exempt from section 35-190 relating to lapsing of appropriations. Subject to legislative appropriation, the commission shall use fund monies to purchase and repair telecommunication devices, to administer the program established by this section and for the operating costs of the commission.

36-1971. Licensure; acts and persons not affected

A. A person shall not practice as an interpreter for the deaf and the hard of hearing without a license issued pursuant to this article. The licensure requirements of this article also apply to interpreters who provide services for legal proceedings as prescribed in section 12-242.

B. The commission by rule shall prescribe education, examination and work history requirements for the following three categories of licenses:

1. Legal.

2. Generalist.

3. Provisional.

C. This article does not apply to:

1. An interpreter who works in this state for less than twenty days if that person registers with the commission to provide interpreting services in nonlegal situations.

2. An interpreter who provides interpreting services at religious activities.

3. An interpreter who provides interpreting services on an emergency basis if the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer.

4. An interpreter who works without compensation in nonlegal situations.

5. An interpreter who works in a school in this state pursuant to the individual education plan of a deaf or hard of hearing pupil. The qualifications of an interpreter working in a school in this state shall be determined by the individualized education program team. A school district shall inform a parent or guardian of a deaf or hard of hearing pupil of the parent or guardian's right to request a licensed interpreter.

6. Activities and services of an interpreter intern or student in training if both of the following are true:

(a) The interpreter is enrolled in a program of study in interpreting at an accredited institution of higher learning.

(b) The interpreter works under the supervision of a person licensed pursuant to this article as part of a supervised program of study and is identified to all consumers as an interpreter intern or student in training.

36-1972. Use of title; prohibited acts; violation; classification

A. A person who is not licensed pursuant to this article shall not:

1. Use any title, abbreviation, words, letters, signs or figures to indicate that the person is licensed pursuant to this chapter.

2. Practice as an interpreter for the deaf and the hard of hearing.

3. Use another person's license.

B. A person who violates this section is guilty of a class 2 misdemeanor.

36-1973. Qualifications for licensure

A. To receive a license to practice as an interpreter pursuant to this article a person shall submit an application and application fee as prescribed by the commission.

B. The applicant shall document to the commission's satisfaction that the applicant has successfully completed the education, examination and work history requirements for the specific category of license for which the licensee is applying.

36-1974. Issuance and renewal of license; continuing education

A. The executive director shall issue a license if the applicant has satisfied all of the requirements for licensure under this article.

B. A license issued pursuant to this article is subject to renewal one year after the date it was issued and terminates thirty days after the renewal date unless it is renewed.

C. Each licensee shall renew the license not earlier than sixty days before and not later than thirty days after the license expires by submitting the renewal fee and a completed renewal form. A licensee who does not renew a license as required by this article must also pay a penalty fee as prescribed by the commission for late renewal. A person who practices interpreting in this state after that person's license has expired is in violation of this article.

D. A person whose license terminates shall submit an application and application fee as an original applicant for licensure.

E. The commission by rule may prescribe continuing education requirements as a condition of license renewal.

36-1975. Denial of licensure

The commission may refuse to issue or renew a license if the commission finds that any of the following is true:

1. The applicant committed fraud or misrepresentation in applying for a license in this state or another state.

2. The applicant was convicted of a felony offense or any other offense involving moral turpitude.

3. The applicant does not meet minimum qualifications as prescribed by this article.

4. The applicant was adjudicated insane or incompetent.

5. The applicant engaged in fraud, dishonesty or corruption on a certification examination in another state.

36-1976. Revocation or suspension of license

A. The commission may revoke or suspend a license issued under this article, place a licensee on probation, issue a reprimand or impose a civil penalty for any of the following reasons:

1. Unprofessional conduct.

2. A violation of this article.

3. Gross negligence or incompetence in the performance of duties.

4. Fraud, dishonesty or corruption.

5. Inability to perform the duties of an interpreter at a level of skill that is required by the commission.

6. Conviction of a felony offense or any other offense involving moral turpitude.

7. Failing to meet minimum qualifications as prescribed by this article.

8. Adjudication of insanity or incompetency.

B. Before it takes disciplinary action pursuant to this section, the commission shall give a licensee notice and an opportunity for a hearing pursuant to its rules.

C. The commission may issue subpoenas, examine witnesses and administer oaths pursuant to a hearing held under this section.

36-1977. Right to examine and copy evidence

In connection with a commission investigation conducted pursuant to section 36-1976, the commission at all reasonable times has the right to examine and copy any documents, reports, records or other physical evidence of any person being investigated or reports, records and any other documents maintained by and in the possession of any public or private agency if the commission believes this information is related to unprofessional conduct or the mental or physical ability of a licensee to practice pursuant to this article.

36-1978. Injunctive relief; bond; service of process

A. In addition to all other available remedies, if the commission has any reason to believe that a person has violated this article or a commission rule, the commission through the attorney general or the county attorney of the county in which the violation is alleged to have occurred may apply to the superior court in that county for an injunction restraining that person from engaging in the violation.

B. The court shall issue a temporary restraining order, a preliminary injunction or a permanent injunction without requiring the commission to post a bond.

C. Service of process may be on the defendant in any county of this state where the defendant is found.

Arizona Secretary of State
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Administrative Rules Division
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TITLE 9. HEALTH SERVICES

CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

Authority: A.R.S. §§ 36-1946 and 36-1947 et seq.

Supp. 21-3

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(Authority: A.R.S. § 36-1946(A))

Editor's Note: The emergency rulemakings amending R9-26-501 and R9-26-507 at 27 A.A.R. 549 were due to expire on September 27, 2021. The Commission amended these Sections by final rulemaking before the expiration of the emergency. These Sections became effective August 4, 2021, at 27 A.A.R. 1257 (Supp. 21-3).

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CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

ARTICLE 1. REPEALED

R9-26-101. Renumbered

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Amended by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-101 renumbered to Section R9-26-201 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

ARTICLE 2. TELECOMMUNICATIONS EQUIPMENT DISTRIBUTION PROGRAM

R9-26-201. Definitions

In addition to the definitions listed in A.R.S. § 36-1941, the following terms apply to this Article and A.R.S. § 36-1947:

"Applicant" means a person who applies to the Commission for telecommunications equipment.

"Audiologist" means a person who is licensed under A.R.S. § 36-1940 by the Arizona Department of Health Services.

"Deafblind" means a person who is either deaf or hard of hearing and:

Has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or

Has a field defect where the peripheral diameter of the visual field subtends an angular distance no greater than 20 degrees, or

Has a progressive visual loss with a prognosis of one or both of the conditions stated in the two preceding subsections.

"Director" means the Executive Director of the Arizona Commission for the Deaf and Hard of Hearing.

"Hearing aid dispenser" has the same meaning as in A.R.S. § 36-1901.

"Hearing or speech-related disability" means a disability that prevents a person from hearing or articulating speech audibly or clearly, including deafness.

"Program" means the Telecommunications Equipment Distribution Program.

"Recipient" means a person who receives telecommunications equipment through the Program.

"Severely hearing or speech impaired" under A.R.S. § 36-1947(A) means a hearing or speech-related disability.

"Supplier" means a person that sells telecommunications equipment.

"Telecommunications equipment" means equipment that allows a person with a hearing or speech-related disability to access the telephone network.

"Vocational rehabilitation counselor" means a Department of Economic Security employee who has a Master's degree in rehabilitation counseling from a university accredited by the National Council on Rehabilitation Education and who is certified by the Commission on Rehabilitation Counseling.

"Voucher" means the Commission's authorization of payment for telecommunications equipment.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-201 renumbered to R9-26-202; new Section R9-26-201 renumbered from R9-26-101 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-202. Eligibility

To be eligible for telecommunications equipment through the Program, a person shall:

1. Reside in Arizona;
2. Be a citizen of the U.S. or an alien whose presence in the U.S. is authorized under federal law;
3. Have a need for telecommunications equipment available through the Program due to a hearing or speech-related disability, as certified by an authorized person described in R9-26-203;
4. Have access to a telephone line;
5. Not have used a voucher to purchase telecommunications equipment within five years before the date of application under R9-26-203 unless the individual's disability status has changed during that time; and,
6. Have returned to the Commission all telecommunications equipment that was distributed to the person by the Commission before June 30, 2002.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-202 renumbered from R9-26-301 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-202 renumbered to R9-26-203; new Section R9-26-202 renumbered from R9-26-201 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-203. Application Process

To apply for telecommunications equipment under the Program, an eligible person shall:

1. Request an application for participation in the Program from the Commission; and
2. Complete and return the application to the Commission with:
   a. Certification from an authorized person described under R9-26-204 that the applicant has a hearing or speech-related disability and needs the telecommunication equipment requested on the application; and
   b. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-203 renumbered from R9-26-304 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-203 renumbered to R9-26-204; new Section R9-26-203 renumbered from R9-26-202 and amended by final rulemaking at 22 A.A.R. 1675, effec-

tive August 15, 2016 (Supp. 16-2).

R9-26-204. Persons Authorized to Certify Need for Telecommunications Equipment

A. The following licensed professionals may certify an applicant's hearing or speech-related disability and need for the requested telecommunications equipment:
1. A dispensing audiologist licensed in accordance with A.R.S. Title 36, Chapter 17;
2. An audiologist licensed in accordance with A.R.S. Title 36, Chapter 17;
3. A physician licensed in accordance with A.R.S. Title 32, Chapter 13 or 17;
4. A physician assistant licensed in accordance with A.R.S. Title 32, Chapter 25;
5. A nurse practitioner licensed in accordance with A.R.S. Title 32, Chapter 15;
6. A speech-language pathologist licensed in accordance with A.R.S. Title 36, Chapter 17;
7. A hearing aid dispenser licensed in accordance with A.R.S. Title 36, Chapter 17; or
8. A vocational rehabilitation counselor.

B. By certifying a hearing or speech-related disability and need for the requested telecommunications equipment, the certifier attests that the certifier:
1. Is authorized to certify under subsection (A);
2. Has evaluated the applicant's hearing or speech-related disability to determine the applicant's need for the telecommunications equipment requested on the application; and
3. Has determined that the applicant will benefit from the telecommunications equipment requested on the application.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-204 renumbered from R9-26-305 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-204 renumbered to R9-26-205; new Section R9-26-204 renumbered from R9-26-203 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-205. Vouchers

A. The Commission shall issue to an eligible applicant an individually numbered voucher for a specified dollar amount for the applicant to purchase telecommunications equipment for which the applicant has a certified need. The applicant shall use the voucher only to purchase the telecommunications equipment specified on the voucher.

B. Vouchers are non-transferable and have no cash value.

C. A voucher expires 90 days after its issuance date.

D. If a voucher is lost or stolen, the applicant may apply for a replacement voucher by requesting, completing and returning to the Commission a replacement voucher form in which the applicant shall attest under penalty of perjury that:
1. The original voucher was stolen or lost; and
2. If the original voucher is recovered, the applicant shall return the original voucher to the Commission within 30 days after the voucher is recovered.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-302 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). New Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-205 renumbered to R9-26-206; new Section R9-26-205 renumbered from R9-26-204 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-206. Redeeming a Voucher

A. To redeem a voucher for telecommunications equipment under the Program, a supplier shall submit to the Commission the voucher with a copy of a receipt, which is signed by the supplier and the recipient of the telecommunications equipment and which specifies the telecommunications equipment sold and its purchase price.

B. The Commission shall verify the accuracy of information submitted on the receipt and the validity of the voucher.

C. The Commission shall reimburse to the supplier the portion of the purchase price of the telecommunications equipment that does not exceed the amount printed on the voucher.

D. The Commission shall not reimburse to the supplier an amount in excess of the amount printed on the voucher.

E. If the amount printed on the voucher exceeds the purchase price of the telecommunications equipment, the supplier shall not refund the difference between the two amounts to the recipient of the telecommunications equipment in any form including money, equipment, or other goods and services.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-301 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). New Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-206 renumbered to R9-26-207; new Section R9-26-206 renumbered from R9-26-205 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-207. Confidentiality

A. The Commission shall use the information provided by the Program's applicants or recipients in the course of the administration of the Program solely to administer the Program.

B. The Commission shall not disclose the name of an applicant for or recipient of telecommunications equipment without a written request for disclosure. Even with a written request for disclosure, the Commission shall not disclose personal identifying or protected health information regarding an applicant or recipient.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). New Section R9-26-207 renumbered from R9-26-206 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

ARTICLE 3. ADMINISTRATIVE PROCEDURES

R9-26-301. Making a Complaint

A. A complaint may be filed by:
1. An individual for whom interpreting is provided,
2. A person having a direct or professional interest in the incident specified in the complaint, or
3. A person having reason to believe that interpreting was provided by an individual who is not licensed by the Commission and not exempt from licensure under A.R.S. § 36-1971(C).

B. Complaint requirements. A complainant shall:

1. Submit the complaint to the Commission in writing or by videotape. If a complaint is submitted by videotape, the Commission shall have the complaint interpreted and transcribed into English and forward the transcript to the complainant for review and approval;
2. Submit the complaint to the Commission within 90 days of the alleged offense; and
3. Specify in the complaint the name of the individual complained against, date and location of the alleged offense, and the action complained about.

C. A complainant may withdraw a complaint at any time by providing notice to the Commission.

Historical Note
Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-202; new Section R9-26-301 renumbered from R9-26-206 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section renumbered from R9-26-512 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-302. Hearing Procedures
The Commission shall conduct all hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

Historical Note
Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-302 renumbered from R9-26-205 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section renumbered from R9-26-515 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-303. Rehearing or Review of Commission Decision

A. The Commission shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

B. A party may amend a motion for rehearing or review at any time before the Commission rules on the motion.

C. The Commission may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings or an order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct by the Commission, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
7. The Commission's decision is the result of passion or prejudice; or
8. The findings of fact or decision is not justified by the evidence or is contrary to law.

D. The Commission may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). The Commission shall specify the particular grounds for any order modifying a decision or granting a rehearing.

E. When a motion for rehearing or review is based on affidavits, the affidavits shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.

F. No later than 15 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Commission may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Commission may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

G. If a rehearing is granted, the Commission shall hold the rehearing within 60 days after the date on the order granting the rehearing.

H. If the Commission makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Commission shall issue the decision as a final decision without an opportunity for rehearing or review.

Historical Note
Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section renumbered from R9-26-516 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-304. Disciplinary Action
After an opportunity for hearing and a Commission determination that a licensee violated A.R.S. Title 36, Chapter 17.1, or this Chapter, the Commission shall consider the following factors to determine the degree of discipline to impose under A.R.S. § 36-1976(A):
1. Prior conduct resulting in discipline;
2. Dishonest or self-serving motive;
3. Amount of experience as an interpreter;
4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Commission;
5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct;
7. Degree of harm resulting from the conduct; and
8. Whether harm resulting from the conduct was cured.

Historical Note
Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-203 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). New Section R9-26-304 renumbered from R9-26-517 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-305. Renumbered

Historical Note
Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-204 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

ARTICLE 4. EXPIRED

R9-26-401. Expired

Historical Note
Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 4411, effective September 30,

2007 (Supp. 07-4).

R9-26-402. Expired

Historical Note
Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 4411, effective September 30, 2007 (Supp. 07-4).

R9-26-403. Repealed

Historical Note
Adopted effective May 12, 1986 (Supp. 86-3). Section repealed by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

ARTICLE 5. INTERPRETER LICENSURE AND REGULATION

R9-26-501. Definitions
In addition to the definitions in A.R.S. §§ 12-242 and 36-1941, in this Article, the following definitions apply unless otherwise specified:

"ACCI" means American Consortium of Certified Interpreters, an organization that certifies interpreters at one of three levels: ACCI Generalist, ACCI Advanced, or ACCI Master.

"Accredited" means approved by a regional or national accrediting agency recognized by the U.S. Department of Education.

"Applicant" means an individual seeking an original or renewal license from the Commission.

"Application" means the documents, forms, and additional information required by the Commission to be submitted by or on behalf of an applicant.

"BEI" means Board for Evaluation of Interpreters.

"CDI" means certified deaf interpreter, a certification issued by RID or BEI.

"CI" means certificate of interpretation, a certification issued by RID.

"CIC" means Court Interpreter Certification, a legal specialist certification issued by BEI.

"CLIP-R" means conditional legal interpreting permit--relay, a certification issued by RID to a deaf or hard-of-hearing interpreter or transliterator who works in a legal setting.

"Continuing education" means a workshop, seminar, lecture, conference, class, or other educational activity relevant to the practice of interpreting.

"CSC" means comprehensive skills certificate, a certification issued by RID.

"CT" means certificate of transliteration, a certification issued by RID.

"Deaf interpreter" means an individual who is deaf or hard of hearing and provides interpreting for deaf individuals with special language needs.

"EIPA" means educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

"Generalist interpreter" means an individual who provides interpreting in any community setting, except a legal setting, for which the individual is qualified by education, examination, and work history. A generalist interpreter provides interpreting in a legal setting only if appointed by a judge under A.R.S. § 12-242.

"IC" means interpretation certificate, a certification issued by RID.

"Intermediary Level III or V" means a certification issued by BEI for interpreters who are deaf or hard of hearing.

"Interpreter" means an individual who provides interpreting between American Sign Language and English.

"Legal interpreter" means an individual who is qualified by education, examination, and work history to provide interpreting in a legal setting.

"Class A legal interpreter" means a legal interpreter who provides interpreting in court proceedings or any other legal setting, as prescribed under A.R.S. § 12-242, and meets the certification requirement under R9-26-504(A)(1)(a). An individual who is licensed by the Commission as a Class A legal interpreter on the date this Section takes effect, shall meet the certification requirement under R9-26-504(A)(1)(a) no later than the individual's renewal date, as specified in R9-26-507(A), in 2023.

"Class C legal interpreter" means a legal interpreter who provides interpreting in a legal setting, as prescribed under A.R.S. § 12-242, when teamed with a Class A legal interpreter and meets the certification requirement under R9-26-504(A)(1)(b).

"Class D legal interpreter" means a legal interpreter who meets the certification requirement under R9-26-504(A)(1)(c) and is either a deaf or hard-of-hearing interpreter or an oral transliterator.

"Legal training" means a structured program presented by the Commission, a court, Bar Association, law-enforcement association, RID, accredited institution, or comparable organization, providing information relevant to legal interpreting such as the following:
The requirements of A.R.S. § 12-242,
The structure of the judiciary system of this state,
The judiciary process of this state,
Administrative adjudicatory procedures,
Law enforcement procedures, or
Commonly used legal terms.

"Level III, IV, or V" means a certification issued by BEI.

"Licensee" means an interpreter who holds a current license issued under A.R.S. § 36-1974 and this Article.

"License year" means the days between the date of license issuance and the date of license expiration.

"Mentor" means an individual licensed under R9-26-503 or R9-26-504 who agrees to assist a provisional licensee to develop as an interpreter by occasionally observing the provisional licensee providing interpreting services and providing feedback.

"MCSC" means master comprehensive skills certificate, a certification issued by RID.

"NAD" means the National Association of the Deaf.

"NAD III (generalist)," means a certification issued by NAD.

"NAD IV (advanced)," means a certification issued by NAD.

"NAD V (master)," means a certification issued by NAD.

"NIC" means National Interpreter Certification.

"NIC Advanced" means a certification issued by NAD-RID.

"NIC Certified" means a certification issued by NAD-RID.

"NIC Master" means a certification issued by NAD-RID.

"OC:B" means oral certificate: basic, a certification issued by BEI.

"OC:C" means oral certificate: comprehensive, a certification issued by BEI.

"OIC" means oral interpreting certificate, a certification issued by RID in one of three categories: comprehensive, spoken to visible, or visible to spoken.

"Oral transliteration" means to facilitate communication between an individual who is deaf or hard of hearing and an individual who hears by using inaudible speech and natural gestures to convey a message to the deaf or hard-of-hearing individual and understanding and verbalizing the message and intent of the speech and mouth movements of the individual who is deaf or hard of hearing.

"OTC" means oral transliteration certificate, a certification issued by RID.

"Platform or performance setting" means an environment involving an appearance by a designated speaker or performers, typically on a raised surface.

"Provisional interpreter" means an individual who is qualified by education, examination, and work history to provide interpreting while pursuing RID, NAD, or BEI certification.

"Class A provisional interpreter" means a provisional interpreter who provides oral transliteration and is working towards certification by RID, NAD, or BEI. A Class A provisional interpreter shall not provide interpreting services in a legal setting.

"Class B provisional interpreter" means a provisional interpreter who is qualified to provide interpreting services without a team interpreter licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) and (b), except in a medical, mental health, platform or performance, or legal setting. A Class B provisional interpreter may provide interpreting services in a medical, mental health, or platform or performance setting only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class B provisional interpreter shall not provide interpreting services in a legal setting.

"Class C provisional interpreter" means a provisional interpreter who is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class C provisional interpreter shall not provide interpreting services in a legal setting.

"Class D provisional interpreter" means a provisional interpreter who is deaf or hard of hearing and is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or (b) or R9-26-504(A)(1)(a) through (c). A Class D provisional interpreter shall not provide interpreting services in a legal setting.

"Qualified interpreter" means an individual licensed under this Chapter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary required by the interpreting situation.

"RID" means Registry of Interpreters for the Deaf.

"RSC" means reverse skills certificate, a certification issued by RID.

"SC:L" means specialist certificate: legal, a certification issued by RID.

"SC:PA" means specialist certificate: performing arts, a certification issued by RID.

"TC" means transliteration certificate, a certification issued by RID.

"Team" means two or more licensed interpreters, at least one of whom is licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), providing interpreting for an individual or group of individuals during a single interpreting session.

"Trilingual Advanced or Master" means a specialist certification issued by BEI for interpreters of Spanish, English, and American Sign Language.

"Unprofessional conduct," as used in A.R.S. § 36-1976, means:

Violation of the NAD-RID Code of Professional Conduct, 2005, which is incorporated by reference and available from the Commission and RID, 333 Commerce Street, Alexandria, VA 22314, or www.rid.org. The material incorporated includes no later edition or amendment; or

Failure to comply with a provision of A.R.S. Title 36, Chapter 17.1, Article 2 or this Chapter.

"VRI" means video remote interpreting, a service that uses video telecommunication devices to provide interpreting between or among individuals who are at one or more locations separate from the interpreter.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2). Section R9-26-501 amended by emergency rulemaking at 27 A.A.R. 549, with an immediate effective date of March 31, 2021; valid for 180 days under A.R.S. § 41-1026 (D) (Supp. 21-1). Section amended by final rulemaking at 27 A.A.R. 1257, with an immediate effective date of August 4, 2021 (Supp. 21-3).

R9-26-502. License Application

A. An applicant for an original license shall submit to the Commission the following information, on an application form provided by the Commission:

1. Applicant's full name;
2. Applicant's Social Security number;
3. Applicant's home or business address;
4. Applicant's e-mail address;
5. Applicant's home, business, or mobile telephone number;
6. Applicant's birth date;
7. Any name by which the applicant has ever been known;
8. The start and end dates of the applicant's current certification cycle with RID, NAD, or BEI, as applicable;
9. Category of licensure for which application is made and if applicable, the class of legal or provisional interpreter license for which application is made;
10. Name of any state or foreign country in which the applicant is currently licensed or certified to practice as an interpreter, the license or certificate number, date issued,

date of expiration, and a statement whether the license or certificate is or was the subject of discipline and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;

11. A statement of whether the applicant has ever been denied a license or certificate to practice as an interpreter by a government licensing authority and if the answer is yes, a complete explanation of the denial including date, name of the government licensing authority, and reason for denial;
12. A statement of whether the applicant has ever been convicted of a felony or of an offense involving moral turpitude in this or any other jurisdiction and if the answer is yes, a complete explanation of the charge and place and date of conviction;
13. A statement of whether the applicant has been adjudicated insane or incompetent and if the answer is yes, a complete explanation including date and place of adjudication;
13. A statement of whether the applicant's NAD, RID, or BEI certification lapsed and if so, a complete explanation including date of and reason for the lapse;
15. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction lapsed and if so, a complete explanation including date of and reason for the lapse;
16. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction was subject to a complaint and if so, a complete explanation including date, allegation, and discipline imposed, if any;
17. A statement of whether the applicant's NAD, RID, or BEI certification was subject to a complaint and if so, a complete explanation including date, allegation, and discipline imposed, if any; and
18. A statement signed by the applicant verifying the truthfulness of the information provided and affirming that the applicant will comply with the NAD-RID Code of Professional Conduct;

B. In addition to the form required under subsection (A), an applicant shall submit or have submitted on the applicant's behalf the following:

1. Documentation of name change if the applicant is applying under a name different from the name on any of the documents required under this Article;
2. A photocopy of the applicant's:
   a. High school diploma or GED or a transcript, official or unofficial, showing the degree awarded and date; or
   b. Diploma from an accredited college or university or a transcript, official or unofficial, showing the degree awarded and date;
3. If the answer to any item in subsections (A)(9) through (A)(15) is yes, a copy of any relevant order;
4. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law;
5. Two identical passport-size photographs of the applicant that:
   a. Are in color, and
   b. Are taken no more than six months before the date of application; and
6. The fee required under R9-26-508.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-503. Application for Generalist Interpreter License

To apply for a generalist interpreter license, an applicant shall:

1. Comply with R9-26-502; and
2. Submit a photocopy of current documentation showing that the applicant holds one or more of the following certifications:
   a. Hearing interpreters: NAD III, IV, or V; RID CI, CSC, CT, IC, MCSC, RSC, SC:L, SC:PA, or TC; NIC Certified, Advanced, or Master; or BEI Levels III, IV, or V, Basic, Advanced, Master, Trilingual Advanced, Trilingual Master, CIC, or other certification deemed appropriate by the Commission;
   b. Deaf interpreters: RID CDI, CLIP-R, or SC:L; BEI Intermediary Level III or V, CDI, or other certification deemed appropriate by the Commission; or
   c. Oral interpreters: RID OIC or OTC, BEI OC:B or OC:C, or other certification deemed appropriate by the Commission.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-504. Application for Legal Interpreter License

A. To apply for a legal interpreter license, an applicant shall comply with R9-26-502 and submit documentation of the following:

1. Certification by RID, NAD, or BEI.
   a. For a Class A legal interpreter license, RID SC:L, BEI CIC, or other legal specialist certification deemed appropriate by the Commission is required;
   b. For a Class C legal interpreter license, NIC Certified, Advanced, or Master, NAD III, IV, or V, CI, CT, or CSC, or BEI Levels IV or V, Advanced, Master, Trilingual Advanced or Master, or other certification deemed appropriate by the Commission is required; and
   c. For a Class D legal interpreter license, RID CDI, CLIP-R, OIC, or OTC or BEI OC:B, OC:C, Intermediary Levels III or V, or CDI, or other certification deemed appropriate by the Commission is required;
2. Hours of paid interpreting after initial certification by RID, NAD, or BEI.
   a. For a Class C legal interpreter license, 10,000 hours are required; and
   b. For a Class D legal interpreter license, 500 hours are required;
3. Hours of legal training. For a Class C or Class D legal interpreter, 50 hours obtained during the five years before the date of application are required.

B. The Commission shall accept the following documentation:

1. RID, NAD, or BEI certification.
   a. A photocopy of current documentation provided by RID, NAD, or BEI. If an applicant's documentation expires during the application process, the Commission shall not complete the licensure process until

the applicant submits current documentation of certification; and
b. A photocopy of the certificate provided by RID, NAD, or BEI or a copy of the letter received from RID, NAD, or BEI at the time of initial certification;
2. Hours of paid interpreting.
a. An applicant shall submit an affidavit affirming that the applicant provided the number of hours of paid interpreting required under subsection (A)(2) after initial certification by RID, NAD, or BEI; and
b. Within the time provided under R9-26-509(F) and upon receipt of a comprehensive written request for documentation of the hours of paid interpreting provided, an applicant shall submit evidence that demonstrates the truthfulness of the affirmation provided under subsection (B)(2)(a).
3. Hours of legal training. A photocopy of documentation from the organization providing the legal training that includes the information required under R9-26-510 (B).

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-505. Application for Provisional Interpreter License

A. To apply for a provisional interpreter license, an applicant shall comply with R9-26-502 and submit documentation of the following:
1. Education. The following hours of participation in an interpreter-preparation training program offered by an accredited college or university or approved by RID, NAD, or BEI:
a. Class A or D provisional license: 40 hours; and
b. Class B or C provisional license: 80 hours;
2. Examination. Pass the written portion of the RID, NAD, or BEI examination; and
3. Work experience. The following hours of interpreting for which a license is not required under A.R.S. § 36-1971:
a. Class A provisional license: 24 hours;
i. A score of at least 4.0 on the EIPA performance test;
ii. ACCI certification; or
iii. A state-issued certification or certificate of competency in good standing;
c. Class C provisional license: 80 hours; and
d. Class D provisional license: 40 hours.

B. In addition to the documentation required under subsection (A), an applicant for a Class B provisional license shall:
1. Have a letter submitted directly to the Commission by an individual licensed under R9-26-503 or R9-26-504 indicating that the individual agrees to:
a. Act as a mentor to the applicant if the applicant is granted a provisional license;
b. Observe the provisional licensee providing interpreting services at least once each month;
c. Provide feedback to the provisional licensee following each observation; and
d. Provide 30-days' notice to the provisional licensee and the Commission before terminating the mentoring relationship; and
2. Submit a letter to the Commission indicating that if the applicant is issued a provisional license, the applicant agrees to:
a. Make and maintain a record of each time the mentor observes the applicant and a summary of the feedback provided;
b. Make the record maintained under subsection (B)(2)(a) available to the Commission annually at license renewal; and
c. Provide 30 days' notice to the Commission and the mentor before terminating the mentoring relationship; or
3. Submit a letter to the Commission indicating that if the applicant is issued a provisional license, the applicant agrees to:
a. Team with an individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b) for at least eight hours each month;
b. Maintain a journal that records the dates on which and the name of the licensee with whom teaming was done and a summary of any feedback provided; and
c. Make the journal maintained under subsection (B)(3)(b) available to the Commission annually upon license renewal.

C. The Commission shall accept the following documentation of the criteria in subsection (A):
1. Education. A photocopy of documents showing that the applicant completed the hours required under subsection (A)(1);
2. Examination. A photocopy of the letter provided by RID, NAD, or BEI indicating that the applicant passed the written portion of the RID, NAD, or BEI examination;
3. Work experience.
a. One or more letters, each of which is signed by an individual or a representative of an entity for whom the applicant provided interpreting, indicating:
i. The name of the applicant,
ii. The dates on which interpreting was provided, and
iii. The hours of interpreting provided by the applicant; or
b. One or more paystubs, each of which indicates:
i. The name of the applicant,
ii. The job title of the applicant,
iii. The dates on which interpreting was provided by the applicant, and
iv. The hours of interpreting provided by the applicant, and
c. For an applicant for a Class B provisional license:
i. A photocopy of the letter provided by EIPA indicating the applicant's score on the EIPA performance test,
ii. A photocopy of the applicant's ACCI certificate, or
iii. A photocopy of the applicant's state-issued certification or certificate of competency in good standing.

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 35, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-506. Short-term Registration of an Interpreter

A. To register with the Commission to provide interpreting in Arizona in a non-legal situation for fewer than 20 days in a

year, an interpreter shall submit the following information in writing to the Commission:
1. Interpreter's name;
2. Interpreter's residential and e-mail addresses;
3. Interpreter's mobile telephone number;
4. Dates on which interpreting will be provided;
5. Name, address, and contact information of the person or event for which interpreting services will be provided; and
6. Date of most recent short-term registration with the Commission, if any.

B. In addition to complying with subsection (A), the interpreter shall submit a copy of current documentation from RID, NAD, or BEI showing the interpreter's certification is in good standing or a copy of the interpreter's license from another state's interpreter licensing authority.

C. An interpreter who makes application under subsections (A) and (B) for a short-term registration shall not provide interpreting services in Arizona until the Commission provides notice the registration has been granted.

D. Within five days after providing interpreting services under a short-term registration, the interpreter shall submit a report to the Commission that provides the dates on and persons or events for which interpreting services were provided.

E. The Commission shall not issue more than two short-term registrations to an interpreter during the interpreter's lifetime.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-507. License Renewal

A. Renewal of a generalist or legal interpreter license.
1. A generalist or legal interpreter license expires one year after the license is issued. To continue to practice as a generalist or legal interpreter, the licensee shall, no more than 60 days before the expiration date, submit to the Commission a license renewal application form that provides the following information about the licensee:
   a. Full name;
   b. Social Security number;
   c. Home or business address;
   d. E-mail address;
   e. Home, business, or mobile telephone number;
   f. The start and end dates of the applicant's current certification cycle with RID, NAD, or BEI, as applicable;
   g. Name of any state or country in which the licensee is currently licensed or certified to practice as an interpreter, the license or certificate number, date issued and date of expiration, and a statement whether the license or certificate is or has been the subject of discipline during the previous year and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;
   h. A statement of whether the licensee has been denied a license or certificate to practice as an interpreter by a licensing authority during the previous year and if the answer is yes, a complete explanation of the denial including date, name of the interpreter licensing authority, and reason for denial;
   i. A statement of whether the licensee has been convicted of a felony or of an offense involving moral turpitude in this or any other jurisdiction during the previous year and if the answer is yes, a complete explanation of the charge and place and date of conviction;
   j. A statement of whether the licensee has been adjudicated insane or incompetent during the previous year and if the answer is yes, a complete explanation including date and place of adjudication;
   k. A statement of whether the applicant's NAD, RID, or BEI certification lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;
   l. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;
   m. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any;
   n. A statement of whether the applicant's NAD, RID, or BEI certification was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any, and if discipline was imposed, a statement of whether the notice required under R9-26-518 was submitted to the Commission;
   o. A statement of whether the applicant completed any continuing education during the previous year and if so, the number of hours completed; and
   p. A statement signed by the licensee verifying the truthfulness of the information provided and affirming that the licensee will comply with the NAD-RID Code of Professional Conduct.
2. In addition to the license renewal application form required under subsection (A)(1), the generalist or legal licensee shall submit or have submitted on the licensee's behalf:
   a. A photocopy of current documentation showing the applicant's NAD, RID, or BEI certification is in good standing. If the licensee's documentation expires during the renewal process, the Commission shall not complete the license renewal process until the licensee submits a photocopy of current documentation;
   b. If the answer to any item in subsections (A)(1)(g) through (A)(1)(m) is yes, a copy of any relevant order; and
   c. The fee required under R9-26-508.
3. If a generalist or legal licensee fails to comply with subsections (A)(1) and (A)(2) on or before the license expiration date, the license expires. The former licensee may renew the expired license by complying with subsections (A)(1) and (A)(2), and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.
4. If an expired license is not renewed under subsection (A)(3), the former licensee may obtain a license only by applying as a new applicant.

B. Renewal of a provisional interpreter license.
1. A provisional interpreter license expires one year after the date of issuance.

2. To continue to practice as a provisional interpreter, the licensee shall, no more than 60 days before the expiration date, submit to the Commission a license renewal application form that provides the information specified under subsection (A)(1).
3. In addition to the license renewal application form required under subsection (B)(2), the provisional licensee shall submit or have submitted on the licensee's behalf:
   a. If the answer to any item in subsections (A)(1)(h) through (A)(1)(m) is yes, a copy of any relevant order;
   b. Documentation required under R9-26-510(C) that demonstrates compliance with the continuing education requirement in R9-26-510; and
   c. The fee required under R9-26-508;
   d. If a Class B provisional licensee wishes to renew the Class B provisional license, letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3); and
   e. If a Class C provisional licensee wishes to renew the Class C provisional license, an affirmation that the licensee has provided and will continue to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b); or
   f. If a Class C provisional licensee wishes to move to a Class B provisional license:
      i. Letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3), and
      ii. Evidence required under R9-26-505(C)(3)(a) or (b) showing at least 500 hours of work experience earned while working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), or
      iii. A score of at least 4.0 on the EIPA performance test.
4. If a provisional licensee fails to comply with subsections (B)(2) and (3) on or before the license expiration date, the license expires. Unless the expired provisional license has previously been renewed under subsections (B)(2) and (3), the former licensee may renew the expired license by complying with subsections (B)(2) and (3) and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.
5. The Commission shall not issue a provisional interpreter license to an interpreter for more than five years over the interpreter's lifetime except that if an interpreter is unable to pursue RID, NAD, or BEI certification because the testing necessary for certification is unavailable due to the COVID-19 pandemic, the Commission shall renew the provisional interpreter license of any interpreter who:
   a. Complies fully with this subsection;
   b. Held a valid provisional interpreter license in its final renewal year on December 30, 2020; and
   c. Obtains certification by RID, NAD, or BEI no later than the interpreter's renewal date, as specified in subsection (B)(1), in 2023.

C. If the documentation previously submitted under R9-26-502(B)(4) was a limited form of work authorization issued by the federal government, an applicant for license renewal shall submit evidence that the work authorization has not expired.

D. The Commission shall require a licensee to submit the information required under R9-26-502(B)(5) every five years so an updated photograph is used in the identification badge required under R9-26-515.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2). Section R9-26-507 amended by emergency rulemaking at 27 A.A.R. 549, with an immediate effective date of March 31, 2021; valid for 180 days under A.R.S. § 41-1026 (D) (Supp. 21-1). Section amended by final rulemaking at 27 A.A.R. 1257, with an immediate effective date of August 4, 2021 (Supp. 21-3).

R9-26-508. Fees and Charges

A. Under the authority provided by A.R.S. §§ 36-1973(A) and 36-1974(C), the Commission establishes and shall collect the following fees, which are not refundable unless A.R.S. § 41-1077 applies:
1. Generalist or legal license application fee, $125;
2. Generalist or legal license renewal application fee, $50;
3. Provisional license application fee, $25;
4. Provisional license renewal application fee, $25; and
5. Penalty for late license renewal, $100.

B. The Commission shall charge $25 to:
1. Replace an identification badge,
2. Issue a duplicate license.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-509. Procedures for Processing Applications; Time Frames

A. For the purpose of A.R.S. § 41-1073, the Commission establishes the following licensing time frames:
1. Administrative completeness review time frame: 30 days;
2. Substantive review time frame: 60 days; and
3. Overall time frame: 90 days.

B. The administrative completeness review time frame listed in subsection (A)(1) begins on the date the Commission receives a license application or license renewal application. During the administrative completeness review time frame, the Commission shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Commission shall specify in the notice what information is missing.

C. An applicant with an incomplete application shall supply the missing information within 30 days from the date of the notice. Both the administrative completeness review and overall time frames are suspended from the date of the Commission's notice until the date that the Commission's office receives all missing information.

D. Upon receipt of all missing information, the Commission shall notify the applicant that the application is complete. The Commission shall not send a separate notice of completeness if the Commission grants or denies a license within the administrative completeness review time frame in subsection (A)(1).

E. The substantive review time frame listed in subsection (A)(2) begins on the date of the Commission's notice of administrative completeness or on expiration of the time listed in subsection (A)(1).

F. If the Commission determines during the substantive review time frame that additional information is needed, the Commission shall send the applicant a comprehensive written request for the additional information. The applicant shall supply the additional information within 60 days from the date of the request. Both the substantive review and overall time frames are suspended from the date on the Commission's request until the date the Commission office receives the additional information.

G. If an applicant needs additional time in which to respond under subsection (C) or (F), the applicant shall submit a written notice of extension to the Commission before expiration of the time to respond that includes the date by which the applicant will submit the information. The applicant shall establish an extension date that is no more than 120 days from the date established under subsection (C) or (F).

H. If an applicant fails to submit information within the time provided under subsection (C) or (F) or as extended under subsection (G), the Commission shall close the applicant's file. An applicant whose file is closed and who later wishes to be licensed, shall apply anew.

I. Within the time listed in subsection (A)(3), the Commission shall:
1. Grant a license to an applicant who meets the requirements in A.R.S. § 36-1973 and this Article, or
2. Deny a license to an applicant who does not meet the requirements in A.R.S. § 36-1973 or this Article.

J. If the Commission denies a license, the Commission shall send the applicant a written notice explaining:
1. The reason for the denial with citations to supporting statutes or rules,
2. The applicant's right to appeal the denial and have a hearing,
3. The time for appealing the denial, and
4. The applicant's right to request an informal settlement conference.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-510. Continuing Education Requirement; Waiver; Extension of Time to Complete

A. Continuing education is required as a condition of licensure renewal.
1. A generalist interpreter shall complete continuing education required by NAD, RID, or BEI to maintain certification by NAD, RID, or BEI. If the certification of a generalist interpreter is suspended or revoked by NAD, RID, or BEI because the generalist interpreter failed to complete the required continuing education, the Commission shall initiate proceedings under Article 3 against the generalist interpreter's license.
2. A Class A legal interpreter shall complete continuing education required by NAD, RID, or BEI to maintain legal certification by NAD, RID, or BEI. If the certification of a Class A legal interpreter is suspended or revoked by NAD, RID, or BEI because the Class A legal interpreter failed to complete the required continuing education, the Commission shall initiate proceedings under Article 3 against the legal interpreter's license.
3. A Class C or D legal interpreter shall complete continuing education required by NAD, RID, or BEI to maintain certification by NAD, RID, or BEI including at least 20 hours of legal training. If the certification of a Class C or D legal interpreter is suspended or revoked by NAD, RID, or BEI because the Class C or D legal interpreter failed to complete the required continuing education or if the Class C or D legal interpreter fails to complete the required hours of legal training, the Commission shall initiate proceedings under Article 3 against the legal interpreter's license.
4. When renewing a license under R9-26-507(B), a provisional interpreter shall submit the evidence required under subsection (B) showing completion of 12 hours of continuing education. The Commission shall accept continuing education:
   a. Designed to enhance the provisional licensee's skill and ability to provide quality interpreting to the deaf and hard-of-hearing community;
   b. Approved by RID, NAD, or BEI, as applicable, for certification maintenance;
   c. Provided by an accredited institution of higher education; or
   d. Provided by an entity involved with the deaf and hard-of-hearing community; and

B. A provisional licensee shall obtain from the provider of a continuing education attended by the licensee documentation that includes:
1. Licensee's name,
2. Name of the continuing education provider,
3. Name of the continuing education,
4. Number of hours of attendance, and
5. Date of the continuing education.

C. Waiver of continuing education requirement.
1. To obtain a waiver of the continuing education requirement, a provisional licensee shall submit to the Commission a written request that includes the following:
   a. The period for which the waiver is requested,
   b. Continuing education completed during the current license year and the documentation required under subsection (B), and
   c. Reason a waiver is needed and supporting documentation:
      i. For military service. A copy of current orders or a letter on official letterhead from the licensee's commanding officer;
      ii. For absence from the United States. A copy of pages from the licensee's passport showing exit and reentry dates;
      iii. For disability. A letter from the licensee's treating physician stating the nature of the disability; and
      iv. For circumstances beyond the licensee's control. A letter from the licensee stating the nature of the circumstances and documentation that provides evidence of the circumstances.
2. The Commission shall grant a request for waiver of the continuing education requirement that:
   a. Is based on a reason listed in subsection (C)(1)(c),
   b. Is supported by the required documentation,
   c. Is submitted no sooner than 60 days before and no later than the license expiration date, and
   d. Will promote the safe and professional practice of interpreting in this state.

D. Extension of time to complete continuing education requirement.
1. To obtain an extension of time to complete the continuing education requirement, a provisional licensee shall submit to the Commission a written request that includes the following:
   a. Ending date of the requested extension,
   b. Continuing education completed during the current license year and the documentation required under subsection (B),
   c. Proof of registration for additional continuing education that is sufficient to enable the provisional licensee to complete all continuing education required for license renewal before the end of the requested extension, and
   d. Licensee's attestation that the continuing education obtained under the extension will be reported only to fulfill the current license renewal requirement and will not be reported on a subsequent license renewal application.
2. The Commission shall grant a request for an extension that:
   a. Specifies an ending date no more than three months from the current license expiration date,
   b. Includes the required documentation and attestation,
   c. Is submitted no sooner than 60 days before and no later than the license expiration date, and
   d. Will promote the safe and professional practice of interpreting in this state.

E. Except as provided in subsection (D), a provisional licensee shall report only hours of continuing education obtained during the license year immediately preceding license renewal. A licensee shall not carry over hours in excess of those required under subsection (A)(4) to a subsequent license year.

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-511. Video Remote Interpreting

A. An interpreter who is licensed under A.R.S. Title 36, Chapter 17.1 and this Article is authorized to provide VRI only for individuals who are located in Arizona.

B. An interpreter who is licensed under A.R.S. Title 36, Chapter 17.1 and this Article and provides VRI shall comply fully with the requirements of this Article.

C. An interpreter who is located outside of Arizona shall not provide VRI for an individual located in Arizona before being licensed under A.R.S. Title 36, Chapter 17.1 and this Article.

Historical Note
Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section repealed; new Section made by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-512. Renumbered

Historical Note
New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section R9-26-512 renumbered to R9-26-301 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-513. Reserved

R9-26-514. Reserved

R9-26-515. Identification Badge Required

A. To protect the public, a licensee shall have and present on request, an identification badge issued by the Commission whenever the licensee provides interpreting services.

B. A licensee who loses or damages the identification badge required under subsection (A) may obtain a replacement identification badge by submitting a request to the Commission and paying the charge specified under R9-26-508.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section R9-26-515 renumbered to R9-26-302; new Section R9-26-515 made by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-516. Renumbered

Historical Note
New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section renumbered to R9-26-303 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-517. Renumbered

Historical Note
New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section renumbered to R9-26-304 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-518. Required Notices to the Commission

A. If a licensee's certification by RID, NAD, BEI, or other acceptable certifying entity is suspended, revoked, or subject to other disciplinary action by RID, NAD, BEI, or the other acceptable certifying entity, the licensee shall provide immediate written notice of the disciplinary action to the Commission. Failure to provide the notice required under this subsection is unprofessional conduct.

B. If a licensee's state-issued certification submitted as qualification for a Class B provisional license is suspended, revoked, or subject to other disciplinary action by the state that issued the certification, the licensee shall provide immediate written notice of the disciplinary action to the Commission. Failure to provide the notice required under this subsection is unprofessional conduct.

C. The Commission shall communicate with a licensee or applicant using the name and address provided to the Commission by the licensee or applicant. To ensure timely receipt of communication from the Commission, a licensee or applicant shall notify the Commission of any change in the licensee's or applicant's name or address.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

From: **Carmen Smith** <c.green@acdhh.az.gov>
Date: Thu, Jun 22, 2023 at 1:41 PM
Subject: Re: Arizona Commission for the Deaf and the Hard of Hearing Exemption for Rulemaking Request
To: Andrew Sugrue <asugrue@az.gov>
Cc: John Owens <jowens@az.gov>, Sherri Collins <s.collins@acdhh.az.gov>

Hello Andrew.

Thank you for following up with the approval to take action with our rules as requested. I look forward to meeting you soon.

Carmen Green Smith
Deputy Director
Arizona Commission for the Deaf and the Hard of Hearing
100 N. 15th Ave., Suite 104
Phoenix, AZ 85007
(602) 542-3362 P
(480) 559-9441 VP
(602) 542-3380 Fax

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On Wed, Jun 21, 2023 at 8:00 AM Andrew Sugrue <asugrue@az.gov> wrote:
Hi Carmen,

Nice to meet you as well! Please proceed with the rulemaking as articulated in the request.

I will be reaching out to schedule a meeting to introduce myself soon!

Thanks,
Andy

From: **Andrew Sugrue** <asugrue@az.gov>
Date: Tue, Sep 10, 2024 at 1:51 PM
Subject: Re: ACDHH Rulemaking
To: Carmen Smith <c.green@acdhh.az.gov>

Greetings Carmen,

You may proceed with submitting these rules to GRRC.

Thanks,
Andy

Gmail

Victoria Vaughn <v.vaughn@acdhh.az.gov>

(no subject)

1 message

Torrey Mansager <torrey.mansager@gmail.com> Thu, Mar 7, 2024 at 5:14 PM
To: publiccomments@acdhh.az.gov

Hello all, so glad the time has come!

Please, consider extending ACDHH's jurisdiction when sanctioning interpreters— let them have the power to protect against unlicensed interpreters as well as nefarious agency practices.

Empower the community further by organizing a union to better protect and establish standards.

Much appreciated.

Gmail

Victoria Vaughn <v.vaughn@acdhh.az.gov>

Feedback on ASL licensure

1 message

LaDonna Gabrielson <ladonna@odiasl.com> Tue, Dec 19, 2023 at 4:00 PM
To: publiccomments@acdhh.az.gov

To the ACDHH Board & Commission,
I am specifically addressing the proposed rulemaking change for Class B Provisional license. The proposed changes address the typographical errors and combine Class A and Class B Provisional license requirements under one heading. While the ACDHH Board and Commission consider the proposed changes for the Class B provisional license, I would like to bring two concerns to their attention. First, based on the competency standards screened by the BEI Basic performance exam, interpreters holding this certificate are incorrectly classified as Generalist Interpreters by current licensure law. Second, a need for further definition and specific guidance on settings where Class B Provisional Interpreters are qualified to work independently, without the support of a generally or legally licensed team interpreter.

Currently, Generalist Interpreters holding a BEI Basic certificate have not proven through examination qualification of interpreting skills for community assignments. Holders of a BEI Basic certificate meet minimum competency standards through examination to interpret only in K-12 and postsecondary educational settings. The BEI Basic performance test screens for terms and scenarios found in general lecture and teaching situations, and other educational contexts. Individuals awarded the BEI Basic certificate are not assessed in other community settings such as: medical, behavioral health, government, employment, finance, performance, public forums, or social service settings. Due to the current misclassification of BEI Basic certificate holders as Generalist Interpreters, they are currently working in these community settings under the Arizona Licensure law. This is incongruent with the definition of the "Generalist Interpreter" classification found in section **R9-26-501** which states a "Generalist Interpreter" means an individual who provides interpreting in *any community setting*, except a legal setting, for which the individual is **qualified by education, examination, and work history**." The BEI Basic performance exam does not meet the exam requirement for the Generalist Interpreter license. As such, the BEI Basic certificate should be removed from the list of acceptable examinations qualifying for the Generalist Interpreter license. It is my recommendation that interpreters currently holding a BEI Basic certificate are better classified as a Class B Provisional Interpreter under section **R9-25-503(2)(a)** or **R9-26-502(A)(1)(a) and (b)** with additional definition and specific guidance on settings where they are qualified to work.

Currently, a Class B Provisional Interpreter may provide interpreting services in a medical, mental health, or platform/performance setting only when working as part of a team that includes at least one individual licensed under section **R9-26-503(2)(a)** or **R9-26-502(A)(1)(a) and (b)**, and shall not provide interpreting services in a legal setting. Because the current licensure law only defines three settings where a Class B Provisional Interpreter must work with a licensed team interpreter, it does not provide adequate guidance for them to determine where they are qualified to interpret independently. As such, these interpreters, without specific guidance from the law, may assume they are qualified to interpret independently. This further perpetuates the risk for ineffective and unethical interpreting service provision in the settings listed above (medical, behavioral health, government, employment, finance, performance, public forums, or social service settings).

The misclassification of BEI Basic certificate holders as Generalist Interpreters, and the limited definition of settings where Class B Provisional Interpreters require the support of a licensed team interpreter in the current licensure law could be harming the lives of Arizona's Deaf, DeafBlind and Hard of Hearing communities. I strongly urge the Board and Commission to evaluate the current proposal with these two concerns in mind and consider revisions to the licensure law based on these facts.

Thank you, LaDonna Gabrielson
RID CI/CT | AZ Legal C

Gmail

Victoria Vaughn <v.vaughn@acdhh.az.gov>

my comments

1 message

Deb Stone HARIS <harisrequest@gmail.com> Thu, Mar 7, 2024 at 8:33 AM
To: publiccomments@acdhh.az.gov

Hi

1. The interpreters who held Legal License for a long time then they can't continue with a legal license because they must have a legal certificate. They should still keep a legal license under grandfather. Since RID stopped offering SC:L, new interpreters who apply for a legal license will require legal certification from BEI or somewhere else which is fine. Because those interpreters had been trained and work for a long time.

2. It would be an ideal to have two separate interpreters listings. One is for Arizona Residents and one for Out of State. This way consumers can verified if VRIs are licensed or not.

Thank you

Deb Stone, CDI/CLIP-R

AZ Legal License D

RID CERTIFIED Certified Deaf Interpreter (CDI)

RID CERTIFIED Conditional Legal Interpreting Permit-Relay (CLIP-R)

Gmail

Victoria Vaughn <v.vaughn@acdhh.az.gov>

Re: ACDHH Notice of Proposed Rulemaking

1 message

Jasmine Marin <jasmine.marin@gmail.com> Sat, Nov 18, 2023 at 2:24 PM
To: Victoria Vaughn <v.vaughn@acdhh.az.gov>

I emailed my comments to the address you listed below by clicking on that link and received an undeliverable error message that the area doesn't exist.

Here are my comments: If we're going to allow other state certifications like Bei, we should still require interpreters to have a bachelor's degree. Since many state certifications don't require that proof, it has become a loophole to avoid becoming fully competent and qualified. I believe a bachelor's in interpreting is the minimum someone should need to be a proficient entry level interpreter. There's a reason RID started requiring a bachelor's. While I don't think a bachelor's in anything non interpreting related should be acceptable (because then they're missing out on the necessary interpreting training obtained in a bachelor's program), we could allow that like RID does in order to address the dearth of bachelor's level programs. When you graduate with an associate's, you're barely a complement language technician. It's not until you complete the additional course work at the bachelor's level, you gain a deeper understanding of morally defensible ethical decision making and actually move toward becoming a practice professional like we claim to be. If we want to be considered professionals, our standards should reflect that.

Please forward them to the appropriate place.

--
Jasmine Marin MS, NIC Advanced, BEI CIC, Arizona License - Legal Class A, Nevada - Registered Advanced, EIPA 4.0
Mohave Sign Language Interpreting Agency/TAM Services LLC
614/374-6269 cell
www.mohavesignlanguage.com

On Fri, Nov 17, 2023, 8:17 PM Victoria Vaughn <v.vaughn@acdhh.az.gov> wrote:

> Dear Arizona Licensed Interpreters and Stakeholders,
> What feedback do you have for the ACDHH American Sign Language licensing rules?
> The recommended changes to the ASL licensing rules for your review are now available here.
> Email your comments to: publiccomments@acdhh.az.gov. The written comments period will end on **December 24, 2023**.
> We will host a virtual meeting for the public to share oral comments on **January 18, 2024 at 2:30 pm.**
>
> Thank you,
> **Victoria Vaughn**
> **Licensing and Compliance Manager**
> Arizona Commission for the Deaf and the Hard of Hearing
> 100 N. 15th Ave. Suite 104
> Phoenix, AZ 85007
> (602) 364-0986 V
> (602) 726-0862 VP
> (602) 542-1320 FAX

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Gmail

Victoria Vaughn <v.vaughn@acdhh.az.gov>

Re: Interpreter Licensure Comments

1 message

Michelle Monahan <michelle.monahan@phoenixcollege.edu> Thu, Jan 4, 2024 at 4:44 PM
Reply-To: michelle.monahan@phoenixcollege.edu
To: publiccomments@acdhh.az.gov

Resending this because it did not go through the first time. I would also like to include two additional comments relate to wanting the rules open for broader changes:

1. It would be worthwhile to consider licensing agencies that provide ASL/Eng interpreting services. Since spoken languages are not regulated by law in most areas, many spoken language agencies that expand to offer ASL/Eng interpreting services are not familiar enough with laws and regulations.
2. Consideration of reciprocity for those licensed in other states may also be a worthwhile discussion. Those working full time in VRI are known to have more than 10 licenses at a time. It's a lot to manage.

Thank you for considering.

MM

Michelle J. Monahan, M.L.S
CI/CT/SC:L, NIC:M, ED K12
Phoenix College
MARICOPA COMMUNITY COLLEGES
Program Director | Interpreter Preparation
michelle.monahan@phoenixcollege.edu
O: 602-285-7837 | VP: 480.692.6866

On Sun, Dec 17, 2023 at 10:28 AM Michelle Monahan <michelle.monahan@phoenixcollege.edu> wrote:

To Whom it May Concern,

Thank you for opening the rules for the recommended changes that respond to some of the adoptions made during covid and for some necessary edits for mistakes in the previous version.

My comments are to suggest the need to open the rules for broader commentary and edits. There are some areas that are vague and at times, problematic, that the community needs to be able to respond to and clarify.

1. Work experience to apply for a for provisional C interpreters does not state that it needs to be supervised. It merely states that work experience needs to be hours for which a license is not required. Given that paid and supervised have been areas of confusion in the licensure, FAQs and application this would be an area worthy of clearing up and making explicit.
2. The community desires a change that would allow someone to apply for an initial provisional B with work experience rather than only as part of an upgrade. Currently an initial application for a provisional B does not allow submission of work experience which prohibits interpreters moving from other states to apply for a provisional B and also prohibits upgrades prior to cycle renewal thus keeping the available pool smaller than it needs to be.
3. The way the law is written, it does not allow a provisional C interpreter to team with a general or legal Deaf interpreter. I do not believe this is the intent of the law and believe the community needs to discuss this.

Thank you for your consideration.

Michelle Monahan.

Michelle J. Monahan, M.L.S
CI/CT/SC:L, NIC:M, ED K12
Phoenix College
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Gmail

Victoria Vaughn <v.vaughn@acdhh.az.gov>

Rule change comments

1 message

Matthew Brown <msbro270@gmail.com> Fri, Mar 8, 2024 at 4:36 PM
To: publiccomments@acdhh.az.gov

I think that the Commission should be able to deal harsher punishments for interpreters who repeatedly/severely violate the code of ethics

I think there should be punishments given to out-of-state interpreters for interpreting without a license

Is there anything to be done/brought against VRI agencies who send unlicensed out-of-state interpreters to interpret virtually in AZ?

Is there anything that can be done as far as oversight over agencies?

Matthew Brown (he/him)
ASL Interpreter: Generalist License
BEI Basic
EIPA: Secondary ASL- 3.9
602.329.1044
Phoenix, AZ

Gmail

Victoria Vaughn <v.vaughn@acdhh.az.gov>

Rule-making Comment

1 message

Ernest Willman <ernest.willman@gmail.com> Tue, Jan 23, 2024 at 6:16 PM
To: publiccomments@acdhh.az.gov

Hello -

Please review and confirm that you have received this email.

I am specifically addressing the proposed rule-making change for Class B provisional license. The proposed changes address the typographical errors and combines Class A and Class B provisional license requirements under one heading. While the ACDHH Board and Commission consider the proposed changes for the Class B provisional license, I would like to bring two concerns to their attention: First, based on the competency standards screened by the BEI Basic performance exam, interpreters holding this certificate are incorrectly classified as Generalist Interpreters by current licensure law. Secondly, there is a need for further definition and specific guidance on settings where Class B Provisional Interpreters are qualified to work independently, without the support of a generally or legally licensed team interpreter.

Generalist Interpreters who hold a BEI Basic certification have not proven have not proven through examination qualification of interpreting skills for community assignments. They meet minimum competency standards through examination to interpret only in K-12 and postsecondary educational settings. The BEI Basic performance test screens for terms and scenarios found in general lecture and teaching situations, and other educational contexts. Individuals awarded the BEI Basic certificate are not assessed in other community settings such as: medical, behavioral health, government, employment, finance, performance, public forums, or social service settings. Due to the current misclassification of BEI Basic certificate holders as Generalist Interpreters, they are currently working in these community settings under the Arizona Licensure law. This is incongruent with the definition of the “Generalist Interpreter” classification found in section R9-26-501 which states a “Generalist Interpreter” means an individual who provides interpreting in any community setting, except a legal setting, for which the individual is qualified by education, examination, and work history.” The BEI Basic performance exam does not meet the exam requirement for the Generalist Interpreter license. As such, the BEI Basic certificate should be removed from the list of acceptable examinations qualifying for the Generalist Interpreter license. It is my recommendation that interpreters currently holding a BEI Basic certificate are better classified as a Class B Provisional Interpreter under section R9-25-503(2)(a) or R9-26-502(A)(1)(a) and (b) with additional definition and specific guidance on settings in which they are qualified to work.

Currently, a Class B Provisional Interpreter may provide interpreting services in a medical, mental health, or platform/performance setting only when working as part of a team that includes at least one individual licensed under section R9-26-503(2)(a) or R9-26-502(A)(1)(a) or (b), and shall not provide interpreting services in a legal setting. Because the current licensure law only defines three settings where a Class B Provisional Interpreter may work with a licensed team interpreter, it does not provide adequate guidance for them to determine where they are qualified to interpret independently. As a result, Class B Provisional interpreters are accepting work in these spaces independently. This further perpetuates ineffective and unethical interpreting service provision in medical, behavioral health, government, employment, finance, performance, public forums, or social service settings.

In the spirit of integrity and high-standards for interpreting licensure - let’s look at Michigan’s interpreting licensure: Michigan has placed BEI-I (Basic) in standard Level 1: non-complex, low-risk environments. More information can be found at the following link on Page 7. [Link: https://www.michigan.gov/lara/-/media/Project/Websites/lara/bchs/Folder2/Qualified-Interpreter---General-Rules.pdf?rev=5da767f57319488784dfdbdc3668db15&hash=2D3601C33660B4C7018BA129FA9A94FD]

The impact of the current language and classification is being felt in our local communities. To illustrate, there was a public event in my community that required an interpreter who was qualified to interpret at a high-level and interpret into English for me and several Deaf Community members. Unfortunately, a BEI Basic-level interpreter accepted the job. Their lack of qualification for the assignment resulted in the misrepresentation and embarrassment of the panelists and myself. Upon realizing the ramifications of this interpreter’s decision, I learned that BEI Basic-level interpreters are being granted a Generalist License in Arizona. This license should be reserved for BEI Advanced and Master Certified Interpreters and/or Nationally Certified Interpreters. If this change were to be implemented, interpreters who currently hold a Generalist License, but do not meet the aforementioned requirements, can be given a 2-year grace period to allow them an adequate amount of time to obtain Advanced level certification or national certification.

The misclassification of BEI Basic certificate holders as Generalist Interpreters and the limited definition of settings where Class B Provisional Interpreters require the support of a licensed team interpreter in the current licensure law is harming the lives of Arizona's Deaf, DeafBlind and Hard of Hearing communities. I strongly urge the Board and Commission to evaluate the current proposal with these two concerns in mind and consider revisions to the licensure law based on the preceding arguments.

—
E. Willman, M.Ed, CDI

Sent via iPhone. Please excuse any typographical errors and/ or brevity of message.

ROUGHLY EDITED COPY

ACDHH

PUBLIC COMMENT RE: INTERPRETER LICENSURE IN ARIZONA

MARCH 8, 2024

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>> CARMEN GREEN SMITH: Good afternoon, and welcome to the Arizona Commission for the Deaf and Hard of Hearing oral proceedings for the Notice of Proposed Rulemaking associated with our Telecommunications Equipment Distribution Program. Michele Michaels will be representing that program. And the proposed rules also related to the licensure of American Sign Language interpreters. So at this time, I am doing a call to the public to see if there are any oral comments related to the Telecommunications Equipment Distribution Program.

Seeing none, I will also verify that to-date, we have not received any written comments related these proposed rules for the Telecommunications Equipment Distribution Program.

Michele, thank you for being present today.

So we will move forward with any oral comments associated with the licensing of American Sign Language interprets. And I will turn it over to Victoria Vaughn who is our licensing manager for these rules.

>> VICTORIA VAUGHN: Thank you. Good afternoon. So we have some Notice of Proposed Rulemaking for specific rules related to interpreter licensure here in Arizona. These rules are -- bear with me just a moment here. Amendments to -- sorry, some of these are amendments to rules related to interpreter licensure.

So the rules listed here are the comments that we'll read. And we'll read the associated rules with them. That go along with the comment. We have quite a few comments related to the legal license interpreter definition that we modify. Are there any public comments related to that right now? From the public. Before I proceed to read the ones that -- where I will read those. Is there anyone here present that makes want to make a comment about the rule related to the legal licensing definition? Okay, seeing none, we're going to go ahead with the comments that were submitted for this oral comment session that I will read on the submitters' behalf. And again, these are related to the definition change or amendment that we're going do for the legal license interpreter.

The first here is from Robert Hann. Comment says: As both a law-trained and mental health-trained professional, it concerns me that steps are being taken to limit significantly the number of legal interpreters that would be able to provide services to Deaf residents of Arizona.

Acquittances and clients have expressed concerns regarding the due process issues of not having interpreting services on a timely basis as well as the anxiety and distress of knowing that there may be delays in the resolution of legal issues.

It is rare that professional organizations and governing bodies choose not to grandfather in professionals that are already competently providing services during rule changes. I personally have seen grandfathering occur in several instances including here in Arizona when the Board of behavioral health changed from certification to licensure. I would strongly urge the Commission to reconsider their direction in this matter.

The next comment here is from Raymond Baesler.

I am a licensed interpreter in Arizona, and I have held a legal-a license since 2017. I want to raise my concerns, as I have for many years, regarding the proposed change to Legal-A licensing requirements. I earned a Legal-A license under the rules that existed in 2017 that allowed interpreters with certain RID certifications who completed numerous hours of additional legal training to obtain a Legal-A license without an additional legal certification.

The most recent change to the rules for Legal-A licensure added an additional certification requirement for those who were already licensed and successfully doing legal interpreting work in Arizona.

While the current proposed change extends the deadline for obtaining that legal

certification, it does not address what I believe to be larger issues.

The additional requirement of legal certification places an unnecessary burden on interpreters who have already attained Legal-A licensure under previous rules. This includes the cost of additional testing, and because RID no longer offers a legal certificate, the need to maintain continuing education units in an additional certification system.

A more important consideration is the impact this change will have on the Deaf community across Arizona. Many interpreters who hold Legal-A licensure will be reduced to a Legal-C license after the proposed deadline.

For various reasons, many are unable or unwilling to pursue additional certification. As a result, the already small pool of Legal-A interpreters in the State will be further reduced.

I urge the Commission to use this rulemaking opportunity to add a grandfather clause allowing those who already hold a Legal-A license to keep that license without any additional requirements so that they can continue to provide communication access in legal matters for the Deaf community in this state.

Next comment on the same subject is from David Svoboda.

I see no reason why the proposed changes insofar as they impact Legal-licensed interpreters should not be approved as they merely eliminate the extension of time to earn the Legal-A license that was granted due to COVID. Which has since expired already. None of the language access personnel in the State courts with whom I shared the information expressed any concerns about the proposed rulemaking for Legal-licensed interpreters to me.

So our final comment in relation to the Legal-A licensure is from Joni Horn.

My name is Joni Horn. Owner of Arizona Freelance Interpreting Services. My comments will focus on the change made to the Legal-A licensure change during the last review and rules change.

I add mitt I did not make comments during the last Open Comments on the rules change. I knew it would impact the community but did not realize to what extent.

Before the change was made during the prior review, AZ Freelance had a total of 19 Legal-A interpreters it regularly worked with to provide on-site services.

With this number of interpreters, AZFLIS was able to confirm services for many assignments including trials, probation appointments, depositions, last-minute assignments such as going to jail, et cetera.

Many of those interpreters have 20-plus years of experience and have been working in the community including legal assignments. With the experience came many hours of legal training. Originally, when licensure went into effect, the rules stated: R9-26-504. And so -- I'm not going to

read the whole rule there, but Joni cites R9-26-504, part three of that rule that says hours of legal training, 24 hours in the five years before the date of application are required. And this is for a Class D Legal-A license.

And the statement goes on, many interpreters met or exceeding the number of hours working in the community and legal hours of training.

Once COVID spread through the nation, interpreters began working from home, providing video remote interpreting, VRI. The demand for ASL interpreting services in general increased. With the demand increase of ASL service interpreters, interpreters found that they did not need to return to the community to provide on-site services.

ACDHH did extend the deadline for the new requirements of Legal-A testing requirement.

At this point, the feedback we received was many of the Legal-A interpreters found there was plenty of work in the community and did not need to or want to jump additional hurdles.

AZFLIS' number of Legal-A interpreters fell from 19 to 3. One of the three is providing ongoing daytime services to a non-legal customer. Another one of the those three Legal-As provides only VRI.

The ACDHH list of Legal-A interpreters is long but many only provide VRI services and are not here in the State to provide on-site services.

Right now, there's a discussion within the RID Registry of Interpreters for the Deaf, legal special interest group involving VRI not being a suitable accommodation for courtroom hearings. RID no longer offers the FDL, which means the only option for a legal test is the Court interpreter certification CIC. Closest testing facility is Texas. The entire process can take 9 to 12 months from application to test results.

With the current testing system, Arizona will never be able to increase its number of Legal-A interpreters to meet the demand of an increasing population.

Here is a list of assignments we did cover with the Legal-A licensed interpreter which we cannot cover any longer: School emergency, if the resource officer needs to question a student, an assault victim at a forensic emergency facility, a police emergency, CPS emergency, any call that comes in and is requesting asap services.

It is understandable that changes need to be made to further the profession and the protection of the communities we serve. At what point is it harmful to the communities we serve? If services are needed for a Deaf juror, those services have a 95% chance of not getting confirmed due to shortage. A trial which has many moving parts regarding interpreter roles is tough. Within the courtroom, there are different roles of the interpreter, the proceeding interpreter, the table interpreter, and the jury interpreter.

You can see at times, some cases require a minimum of four interpreters. Is at this time recommendation of the Board to utilize those Legal-A interpreters who provide only VRI services to commute to Arizona to provide services?

We currently have local Legal-A interpreters who do not accept legal assignments. That, too, skews the number of available interpreters that is not truly reflected on the list.

I do know that when the rules and regulations review happened the last go around, there were Legal-A interpreters who did plan to pursue the additional testing requirements. But after COVID, interpreters as a whole did not return to the community to work, and Legal-A interpreters found that they had plenty of work and did not need to pursue an additional certification.

In hindsight, to not do any harm to our community, grandfathering those Legal-A interpreters of 2016 to 2020, before they dropped off after COVID, and setting a new requirement of BEI CIC requirements might have better served our communities.

And there's a list of assignment totals from 2020 to 2023. In 2020, 378 assignments were closed. 134 assignments were canceled. Due to lack of interpreters. And 9 assignments were filled.

In 2021, 482 assignments were closed. 135 assignments were canceled. Due to lack of interpreters. And 20 were unfilled.

In 2022, 881 assignments were closed assignments. 122 were canceled due to a lack of interpreters. And 22 assignments were unfilled.

And then in 2023, 690 assignments were closed. 306 were canceled due to lack of interpreters. And 23 were unfilled.

And it says hearings, appointments that were not rescheduled or filled. 23. That's what that unfilled category is for.

You can see, the numbers of legal assignments continue to climb but the canceled unfilled have increased dramatically. This year, the number of closed assignments declined for the first time causing the canceled unfilled to increase.

I am asking to better serve the Deaf and Hard of Hearing community in Arizona. I'm asking the ACDHH board to consider reinstating grandfathering those interpreters who held a Legal-A that dropped to a Legal-C before the rule change to ensure the Deaf and Hard of Hearing communities are better able to receive accommodations and access to information during a very serious time of their life.

With the population of Arizona Deaf and Hard of Hearing community continuing to grow, the Legal-A interpreter on-site number can never catch up to that need.

So that's the end of that comment.

And I believe we have someone on Zoom with us who would like to comment, Marie.

>> MARIE TAVORMINA: I am in full support of the changes that are proposed.

I think the reason I say that is that we've had plenty of time to know what the requirements are to be able to work in the Courts. The first time the regulations were established, we knew that, I think it was -- many of us went and did what we had to do in order to continue to work in the Courts. And then, again, we were given another deadline. And some people met that deadline and got the proper certification and training to be able to work in the Courts.

And I appreciate the fact that you were flexible with the regulations during COVID. Because people weren't able to get the necessary credentials. But, again, we knew this was coming. And there are people I know who have flown to Texas or whatever state is offering the BEI testing so that they can get the proper certification.

Joni Horn is right. A lot of people have not wanted to -- don't want to go back into the community and work. But I don't see how changing the regulations back to grandfathering is going to change that. Maybe we need to look at other reasons why interpreters prefer not to work in the Courts. Maybe there's less incentive, maybe the pay is not as great. Maybe there's not enough training offered. But the regulations were set to protect the Deaf community. Deaf people should have the, you know, well-trained credentialed interpreters working in the Courts. And I would just say, please keep what you got. Don't change the regulations.

And, you know, it's like that movie, if you build it, they will come. There's a regulations. That's what's required. If you're really interested in working in this realm, get what you need to do it. Thank you.

>> VICTORIA VAUGHN: That's all the comments we have for the legal licensure in the proposed rule changes that were approved. For the record too, the other sections of the rules that were in the notice of proposed rule changes are rule R9.

26-501. R R9-26-503. R9-26-505. R9-26.507. And R9-26-509. So the rest of the comments are not directly related to the changes in the proposed rulemaking. But they're related to other issues that they felt a comment needed to be conveyed. So I'm going to read this comment is from Heather Donnel.

I would like the rules and/or laws amended to allow ACDHH jurisdiction over interpreting agencies and or entities providing interpreters. Without such oversight, we have entities making changes to the way they are sending out requests, assigning interpreters, and distributing information that is unethical and violates confidentiality.

At this time, there is no recourse. We know that these practices are harmful to the Deaf and hearing consumers for whom we work and should be disciplined.

It is infuriating and disheartening to see these practices occur, even after having informed the entity of their misconduct.

How can we protect the privacy of our Deaf community members when those receiving the requests, sometimes with very detailed informing, and then sending them out for coverage are not held to the same standards of confidentiality that interpreters are?

So those are all the comments that I have that were requested to be read during this oral comment session.

If you have submitted a written comments to us via email, we appreciate that. Those written comments will be a part of the record as well. And we'll double check just to make sure if there's anyone else that would like to make an oral comment today. Do we have anybody on YouTube that's watching? That wants to make a comment? Anything? No YouTube comments

>> CARMEN GREEN SMITH: None. Okay, seeing none, we want to again thank each of you for participating, whether you submitted written comments with the request for them to be read today or having participated during the written comment session.

We appreciate your feedback. At the adjournment of this meeting, the record will be closed. But we will notify the public when the Commission will be before the Governor's regulatory rule review before their council. So again, thank you for your time and your interest in both the equipment distribution program and the licensing of American Sign Language interpreters. We appreciate it. Thank you very much for participating. And at this time, our meeting is adjourned, and the record is closed. Thank you.

>> CHYLA DALTON-NAVA: The livestream is ended, so you guys are good to go.

>> CARMEN GREEN SMITH: Thank you. Thank you, interpreters.

>> INTERPRETER: Bye.

>> CARMEN GREEN SMITH: Bye-bye.

D-3.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 25

Amend: R9-25-908

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: November 12, 2024

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 25

Amend: R9-25-908

Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend one (1) rule in Title 9, Chapter 25, Article 9 regarding Ground Ambulance Certificate of Necessity. Specifically, as part of completing a recent rulemaking that included the rules in Title 9, Chapter 25, Article 9, the Department identified several areas that might require further discussion and revision and included a delayed implementation date for some requirements to allow for additional discussion with stakeholders. The Department initiated this current rulemaking to allow for further discussion and possible changes to be made to address stakeholder concerns. After meeting with stakeholders, the Department has made changes to reduce the regulatory burden while achieving the same objective.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

The Department indicates the new amendments are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons, and reduces steps, procedures, or processes and amends rules that are outdated and unnecessary, while protecting

the health and safety of patients and the general public. Council staff believes the Department's rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(5) and (6).

2. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

The Department cites both general and specific statutory authority for these rules.

3. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

The Department indicates it did not receive any public comments regarding this rulemaking.

4. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?

The Department indicates there were no changes between the Notice of Proposed Expedited Rulemaking published in the Administrative Register on September 6, 2024 and the Notice of Final Expedited Rulemaking now before the Council for consideration.

5. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department indicates there is no corresponding federal law.

6. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates it issues certificates of necessity. However, the Department indicates a general permit is not applicable under A.R.S. § 41-1037(A)(2) as the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.

Specifically, the Department indicates it issues certificates of necessity under A.R.S. §§ 36-2202(A), 36-2232, 36-2233, 36-2236, and 36-2240. As such, Council staff believes the Department is in compliance with A.R.S. § 41-1037.

7. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?

The Department indicates it did not review any study relevant to this rulemaking.

8. Conclusion

This expedited rulemaking from the Department seeks to amend one (1) rule in Title 9, Chapter 25, Article 9 regarding Ground Ambulance Certificate of Necessity. Specifically, as part of completing a recent rulemaking that included the rules in Title 9, Chapter 25, Article 9, the Department identified several areas that might require further discussion and revision and included a delayed implementation date for some requirements to allow for additional discussion with stakeholders. The Department initiated this current rulemaking to allow for further discussion and possible changes to be made to address stakeholder concerns. After meeting with stakeholders, the Department has made changes to reduce the regulatory burden while achieving the same objective.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF HEALTH SERVICES

October 15, 2024

<u>VIA EMAIL</u>: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 25, Expedited Rulemaking

Dear Ms. Klein:

1. <u>The close of record date</u>: September 16, 2024

2. <u>Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):</u>
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The rulemaking amends requirements to reduce steps and removes requirements that are outdated or need clarification, meeting the requirements in A.R.S. § 41-1027(A)(5) and (6).

3. <u>Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:</u>
The rulemaking for 9 A.A.C. 25 does not relate to a five-year-review report.

4. <u>A list of all items enclosed:</u>
   a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
   b. Statutory authority
   c. Current rule

The Department is requesting that the rules be heard at the Council meeting on December 3, 2024.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES

EMERGENCY MEDICAL SERVICES

PREAMBLE

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

October 15, 2024

2. Article, Part or Sections Affected (as applicable)	**Rulemaking Action**
R9-25-908	Amend

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

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(G)

Implementing statutes: A.R.S. §§ 36-2201, 36-2202, 36-2204.02, 36-2211, 36-2224, 36-2232, 36-2233, 36-2237, 36-2241

4. The effective date of the rule:

This expedited rulemaking becomes effective immediately on the filing of the Notice of Final Expedited Rulemaking pursuant to A.R.S. § 41-1027(H). The effective date is (to be filled in by Register editor).

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 436, March 8, 2024

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 2780, September 6, 2024

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

Name: Rachel Zenuk Garcia, Bureau Chief

Address: Arizona Department of Health Services
Bureau of Emergency Medical Services and Trauma System
150 N. 18th Ave., Suite 540
Phoenix, AZ 85007-3248

Telephone: (602) 364-3150

Fax: (602) 364-3568

E-mail: Rachel.Garcia@azdhs.gov

or

Name: Stacie Gravito, Office Chief

Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007-3232

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Stacie.Gravito@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) §§ 36-2202(A)(3) and (4) and 36-2209(A)(2) require the Arizona Department of Health Services (Department) to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules for carrying out the purposes of A.R.S. Title 36, Chapter 21.1. A.R.S. Title 36, Chapter 21.1, Article 2, specifies requirements related to the regulation of ground ambulance services. The Department has adopted rules to implement these statutes in 9 A.A.C. 25, with the rules in Article 9 establishing requirements for ground ambulance certificates of necessity. As part of completing a recent rulemaking that included the rules in 9 A.A.C. 25, Article 9, the Department identified several areas that might require further discussion and revision and included a delayed implementation date for some requirements to allow for additional discussion with stakeholders. The Department initiated this rulemaking to allow for further discussion and possible changes to be made to address stakeholder concerns. After meeting with stakeholders, the Department has made changes to reduce the regulatory burden while achieving the same objective. The new amendments are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons, and reduces steps, procedures, or processes and amends rules that are outdated and unnecessary, while protecting the health and safety of patients and the general public.

8. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

The Department did not review or rely on any study for this rulemaking.

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 statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

11. A description of any change between the proposed expedited rulemaking, to include a supplemental proposed notice, and the final rulemaking:

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

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

No comments were received.

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:

Permits are not applicable to the content of this rulemaking. However, with reference to 9 A.A.C. 25, Article 9, a general permit is not applicable under A.R.S. § 41-1037(A)(2). The Department issues certificates of necessity under A.R.S. §§ 36-2202(A), 36-2232, 36-2233, 36-2236, and 36-2240.

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:

No federal laws are applicable to this rulemaking.

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:

No business competitiveness analysis was received by the Department.

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. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 25. EMERGENCY MEDICAL SERVICES

ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY

Section

R9-25-908. Operations (Authorized by A.R.S. §§ 36-2201(4), 36-2202(A)(5), 36-2204.02, 36-2211, 36-2224, 36-2232, 36-2233, 36-2237, 36-2241)

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R9-25-908. Operations (Authorized by A.R.S. §§ 36-2204.02, 36-2211, 36-2224, 36-2232, 36-2233, 36-2237, 36-2241)

A. Insurance: A certificate holder shall:

1. Either:
   a. Maintain with an insurance company authorized to transact business in this state:
      i. A minimum single occurrence automobile liability insurance coverage of $1,000,000 for ground ambulance vehicles;
      ii. A minimum single occurrence professional liability insurance coverage for the ground ambulance service of $1,000,000; and
      iii. If the certificate holder provides ALS services or critical care services, a minimum single occurrence professional liability insurance coverage for personnel of the ground ambulance service providing ALS services or critical care services of $1,000,000; or
   b. Be self-insured for the amounts in subsection (A)(1)(a); and
2. Submit to the Department within seven days after renewal of the insurance coverage in subsection (A)(1)(a) or a change in how the insurance coverage in subsection (A)(1)(a) or (b) is obtained:
   a. A copy of the certificate of insurance in subsection (A)(1)(a); or
   b. Documentation of self-insurance according to subsection (A)(1)(b).

B. Record Retention: According to A.R.S. § 36-2241, a certificate holder shall maintain the following records for the Department's review and inspection:

1. The certificate holder's financial statements;
2. All federal and state income tax records;
3. All employee-related expense reports and payroll records;
4. All bank statements and documents used to reconcile accounts;
5. All documents establishing the depreciation of assets, such as schedules or accounting records on ground ambulance vehicles, equipment, office furniture, and other plant and equipment assets subject to depreciation;

6. All prehospital history incident reports, as specified in subsection (J)(1);
7. All patient billing and reimbursement records;
8. All dispatch records, as specified in subsection (J)(2);
9. All policies and procedures required by this Article or Article 2, 10, or 11 of this Chapter;
10. All plans required by this Article or Article 2, 10, or 11 of this Chapter;
11. Documentation of the analysis of response time performance according to subsection (G)(2);
12. Documentation of the analysis of performance of interfacility transports of patients with no time-critical condition, including patients with a time-sensitive condition, according to subsection (H)(1);
13. Documentation of notification to the Department of instances of noncompliance according to subsection (K)(1)(c);
14. All back-up agreements, contracts, grants, and financial assistance records related to ground ambulance vehicles, ambulance response, and transport;
15. All written complaints about the ground ambulance service; and
16. Information about destroyed or otherwise irretrievable records in a file including:
    a. A list of each record destroyed or otherwise irretrievable,
    b. A description of the circumstances under which each record became destroyed or otherwise irretrievable, and
    c. The date each record was destroyed or became otherwise irretrievable.

C. Staffing: A certificate holder shall ensure that:

1. If a ground ambulance vehicle is marked with a level of service, the ground ambulance vehicle is staffed to provide the level of service identified;
2. An administrative medical director for the ground ambulance service complies with requirements in R9-25-201(F) and R9-25-502(B);
3. Policies and procedures are established, implemented, and maintained that cover:
    a. Job descriptions, duties, and qualifications, including required skills and knowledge for EMCTs and other employees; and
    b. Orientation and in-service education for EMCTs and other employees;
4. An EMCT employed by the ground ambulance service:
    a. Is assigned patient care duties consistent with the EMCT's scope of practice and the administrative medical director's evaluation of the

EMCT's skills and capabilities;

b. Complies with the protocols required in R9-25-201(E)(2);

c. Receives training on the policies and procedures required in R9-25-201(E)(3)(b); and

d. Receives ongoing education, training, or remediation consistent with the policies and procedures required in R9-25-201(E)(3)(b)(x); and

5. Staffing of ground ambulance vehicles:

a. For the provision of BLS or ALS, is consistent with A.R.S. § 36-2239; and

b. ~~Effective January 1, 2025, for~~ For critical care services, includes at least one:

i. Paramedic with an additional endorsement, indicating additional training and authorization from the Department to provide critical care services; or

ii. Registered nurse.

D. Communications and Advertising: A certificate holder shall ensure that the ground ambulance service:

1. Makes a good faith effort to communicate information:

a. About its hours of operation to the general public through print media, broadcast media, the Internet, or other means; and

b. About resource availability and deployment to other EMS providers in overlapping and surrounding service areas;

2. Does not advertise that the ground ambulance service:

a. Provides a type of service or level of service other than what is granted in the certificate of necessity,

b. Operates in the service area other than what is granted in the certificate of necessity, or

c. In a manner that circumvents the use of 9-1-1 or another similarly designated emergency telephone number;

3. Establishes, implements, and maintains the protocol for providing information to emergency receiving facility staff concurrent with the transfer of care, required in R9-25-201(E)(2)(d)(i), which includes:

a. The date and time the dispatch was received by the ground ambulance

service;

b. The unique number used by the ground ambulance service to identify the run;

c. The name of the ground ambulance service;

d. The number or other identifier of the ground ambulance vehicle used for the run;

e. The following information about the patient:

i. The patient's name;

ii. The patient's date of birth or age, as available;

iii. The principal reason for requesting services for the patient;

iv. The patient's medical history, including any chronic medical illnesses, known allergies to medications, and medications currently being taken by the patient;

v. The patient's level of consciousness at initial contact and when reassessed;

vi. The patient's pulse rate, respiratory rate, oxygen saturation, and systolic blood pressure at initial contact and when reassessed;

vii. The results of an electrocardiograph, if available;

viii. The patient's glucose level at initial contact and when reassessed, if applicable;

ix. The patient's level of responsiveness score, as applicable, at initial contact and when reassessed;

x. The results of the patient's neurological assessment, if applicable; and

xi. The patient's pain level at initial contact and when reassessed; and

f. Any procedures or other treatment provided to the patient at the scene or during transport, including any agents administered to the patient; and

4. Establishes, implements, and maintains a protocol for providing information to another certificate holder, ambulance service, EMS provider, or health care institution concurrent with the transfer of care, which includes the information in subsections (D)(3)(c), (d), (e), and (f).

E. Dispatch and Scheduling: A certificate holder shall ensure that:

1. A contract or other agreement, including internal policies and procedures, to provide dispatch exists and includes:
    a. Information about other certificate holders with which the certificate holder has a back-up agreement;
    b. The process and parameters under which a ground ambulance vehicle of another certificate holder will be dispatched to respond to a call to which a ground ambulance vehicle of the certificate holder cannot respond;
    c. Except as specified in subsection (E)(2), for an area within the certificate holder's service area that overlaps with another certificate holder's service area, that the nearest ground ambulance vehicle to the patient's location, under either certificate holder that can provide the necessary level of service, will be directed to respond to a call made through 9-1-1 or a similar dispatch system; and
    d. If the entity providing dispatch is external to the ground ambulance service, a requirement that the certificate holder receive a copy of each dispatch made under the contract or other agreement;
2. If a certificate holder has a ground ambulance service contract under R9-25-1104 with a political subdivision, the ground ambulance service contract contains requirements that specify a method for dispatch, which may differ from requirements in subsection (E)(1)(c); and
3. For an interfacility transport of a patient with no time-critical condition:
    a. Unless already specified in a written agreement between the certificate holder and the person requesting the interfacility transport, the entity receiving the request for the interfacility transport provides an estimated time of arrival to the person requesting the interfacility transport at the time that the interfacility transport is requested;
    b. If the estimated time of arrival provided according to subsection (E)(3)(a) changes to a later time, the ground ambulance service, either directly or indirectly, does one of the following:
        i. Contacts another ground ambulance service to respond to the dispatch, based on the ground ambulance service's back-up plan and back-up agreements;
        ii. Provides to the contact at the requesting health care institution

the name and telephone number of another ground ambulance service with which the ground ambulance service has a back-up agreement; or

iii. Provides an amended estimated time of arrival to the person requesting transport that takes into consideration:

(1) The patient's condition and needs, and

(2) Health and safety;

c. ~~Effective January 1, 2025, unless~~ Unless otherwise specified on the certificate holder's certificate of necessity, the actual time of arrival of a ground ambulance vehicle at a health care institution for an interfacility transport of a patient who does not have a time-critical condition is within 60 minutes of the estimated time of arrival in subsection (E)(3)(a) or amended estimated time of arrival in subsection (E)(3)(b)(iii) for at least 90% of the interfacility transports; and

d. If the interfacility transport does not meet the standards in subsection (E)(3)(c), factors that may have contributed to not meeting the standards are considered through the quality improvement process in subsection (K)(2)(b).

F. Transport: A certificate holder:

1. Shall only provide ambulance response or transport within the service area identified in the certificate holder's certificate of necessity except:

a. When authorized by a service area's dispatch, before the service area's ground ambulance vehicle arrives at the scene;

b. According to a back-up agreement; or

c. If the area is not included in the service area of another certificate holder;

2. Except as specified in subsection (F)(3), shall transport a patient in the certificate holder's service area who requests transport; and

3. May deny transport to a patient in the certificate holder's service area:

a. As limited by A.R.S. § 36-2224;

b. If the patient is in a health care institution and the patient's medical condition requires a level of care or monitoring during transport that exceeds the scope of practice of the ambulance attendants' certification;

c. If the transport may result in an immediate threat to the ambulance

attendant's safety, as determined by the ambulance attendant, the certificate holder, the administrative medical director, or a physician providing on-line medical direction and does not affect the ground ambulance service's hours of operation;

d. If the patient is 18 years or age or older, or meets the requirements in A.R.S. § 12-2451, 44-131, or 44-132, and refuses to be transported; or

e. If the patient is in a health care institution and does not meet the federal requirements for medically necessary ground vehicle ambulance transport as identified in 42 CFR 410.40.

G. Response Time Performance: A certificate holder shall ensure that:

1. Response times resulting from a 9-1-1 or similar system dispatch or, if applicable, a request for the interfacility transport of a patient with a time-critical condition comply with requirements of the certificate holder's certificate of necessity;
2. Response time performance, based on the information is subsection (J)(2), is assessed at least every six months for compliance with requirements of the certificate holder's certificate of necessity;
3. The following are reported to the Department annually, in a Department-provided format, concurrent with the submission of the information required in R9-25-909:
   a. Response time data that complies with requirements in A.R.S. § 36-2232(A)(3), and
   b. The results of the response time performance assessments in subsection (G)(2); and
4. If response time performance does not comply with requirements of the certificate holder's certificate of necessity, either:
   a. A corrective action plan, developed according to R9-25-910(E)(2)(a) through (d), is submitted to the Department with the information required in subsection (G)(3); or
   b. The certificate holder submits to the Department with the information required in subsection (G)(3) documentation demonstrating that noncompliance was due to:
      i. A situation specified in A.R.S. § 36-2232(G), or

ii. An external factor beyond the control of the certificate holder.

H. Performance of Interfacility Transports of Patients with No Time-Critical Condition: ~~Effective January 1, 2025, a~~ A certificate holder shall ensure that:

1. The performance of interfacility transports of patients with no time-critical condition~~, including patients with a time-sensitive condition~~:
   a. Is based on the information in subsection (J)(2);
   b. Is assessed at least every six months;
   c. Includes the analysis of:
      i. The number of calls received;
      ii. The time a call was received;
      iii. The initial estimated time of arrival, according to subsection (E)(3)(a); and
      iv. The time of arrival at the patient's location; and
   d. May include:
      ~~v.~~i. Any other information about cancelled calls, amended estimated times of arrival, or delays that may have factored into performance; and
      ~~d.~~ii. ~~Includes a~~ A description of any actions taken by the certificate holder to improve performance;
2. The results of the performance assessments in subsection (H)(1) are reported to the Department annually in a Department-provided format, concurrent with the submission of the information required in R9-25-909; and
3. If the performance of interfacility transports of patients with no time-critical condition does not comply with subsection (E)(3)(c) or requirements of the certificate holder's certificate of necessity, as applicable, either:
   a. A corrective action plan, developed according to R9-25-910(E)(2)(a) through (d), is submitted to the Department with the information required in subsection (H)(2); or
   b. The certificate holder submits to the Department with the information required in subsection (H)(2) documentation demonstrating that noncompliance was due to an external factor beyond the control of the certificate holder.

I. The Department may require that a certificate holder contract for third-party monitoring

of response time performance as part of a:

1. Political subdivision contract, unless both parties to the contract waive the requirement; or
2. Corrective action plan.

J. Records: A certificate holder shall ensure that:

1. A prehospital incident history report, in a Department-provided format, is created for each patient that includes the following information, as available:
    a. The name and identification number of the ground ambulance service;
    b. Information about the software for the storage and submission of the prehospital incident history report;
    c. The unique number assigned to the run;
    d. The unique number assigned to the patient;
    e. Information about the response to the dispatch, including:
        i. The level of service requested;
        ii. Information obtained by the person providing dispatch about the request;
        iii. Information about the ground ambulance vehicle assigned to the dispatch;
        iv. Information about the EMCTs responding to the dispatch;
        v. The priority assigned to the dispatch; and
        vi. Response delays, as applicable;
    f. The date and time that:
        i. The call requesting service was received through the 9-1-1 or similar dispatch system,
        ii. The request was received by the person providing dispatch,
        iii. The ground ambulance service received the dispatch,
        iv. The ground ambulance vehicle left for the patient's location,
        v. The ground ambulance vehicle arrived at the patient's location,
        vi. The EMCTs in the ground ambulance vehicle arrived at the patient's side,
        vii. Transfer of care for the patient occurred at a location other than the destination,
        viii. The ground ambulance vehicle departed the patient's location,

ix. The ground ambulance vehicle arrived at the destination,

x. Transfer of care for the patient occurred at the destination, and

xi. The ground ambulance vehicle was available to take another call;

g. Information about the patient, including:

i. The patient's first and last name;

ii. The address of the patient's residence;

iii. The county of the patient's residence;

iv. The country of the patient's residence;

v. The patient's gender, race, ethnicity, and age;

vi. The patient's estimated weight;

vii. The patient's date of birth; and

viii. If the patient has an alternate residence, the address of the alternate residence;

h. The primary method of payment for services and anticipated level of payment;

i. Information about the scene, including:

i. Specific information about the location of the scene;

ii. Whether the ground ambulance vehicle was first on the scene;

iii. The number of patients at the scene;

iv. Whether the scene was the location of a mass casualty incident; and

v. If the scene was the location of a mass casualty incident, triage information;

j. Information about the reason for requesting service for the patient, including:

i. The date and time of onset of symptoms and when the patient was last well;

ii. Information about the principal reason the patient needs services;

iii. The patient's symptoms;

iv. The results of the EMCT's initial assessment of the patient;

v. If the patient was injured, information about the injury and the cause of the injury;

vi. If the patient experienced a cardiac arrest, information about the

etiology of the cardiac arrest and subsequent treatment provided; and

vii. For an interfacility transport, the reason for the transport;

k. Information about any specific barriers to providing care to the patient;

l. Information about the patient's medical history, including;

i. Known allergies to medications,

ii. Surgical history,

iii. Current medications, and

iv. Alcohol or drug use;

m. Information about the patient's current medical condition, including the information in subsections (D)(2)(e)(v) through (xi) and the time and method of assessment;

n. Information about agents administered to the patient, including the dose and route of administration, time of administration, and the patient's response to the agent;

o. If not specifically included under subsection (J)(1)(l), (l)(iv), (m), or (n), the information required in A.A.C. R9-4-602(A);

p. Information about any procedures performed on the patient and the patient's response to the procedure;

q. Whether the patient was transported and, if so, information about the transport;

r. Information about the destination of the transport, including the reason for choosing the destination;

s. Whether transfer of care for the patient to another EMS provider or ambulance service occurred and, if so, identification of the EMS provider or ambulance service;

t. Unless transfer of care for the patient to another EMS provider or ambulance service occurred, information about:

i. Whether the destination facility was notified that the patient being transported has a time-critical condition and the time of notification,

ii. The disposition of the patient at the destination, and

iii. The disposition of the run;

u. Any other narrative information about the patient, care receive by the patient, or transport; and

v. The name and certification level of the EMCT providing the information; and

2. Dispatch records for each call or request for service, including all cancelled runs, contain the following information, in a Department-provided format:

a. The name of the ground ambulance service;

b. The date;

c. Level of service;

d. Type of service;

e. Staffing of the run;

f. Time of receipt of the call;

g. Time of the dispatch;

~~h. The estimated time of arrival, as provided according to subsection (E)(3)(a) if applicable;~~

~~i.~~h. Departure time to the patient's location;

~~j.~~i. Address of the patient's location;

~~k.~~j. Time of arrival at the patient's location;

~~l.~~k. Departure time to the destination health care institution;

~~m.~~l. Name and address of the destination health care institution;

~~n.~~m. Time of arrival at the destination health care institution;

~~o.~~n. Any type of delay, if applicable;

~~p.~~o. The unique reference number used by the ground ambulance service to identify the patient, dispatch, or run;

~~q.~~p. The number assigned to the ground ambulance vehicle by the certificate holder;

~~r.~~q. The priority assigned by a certificate holder to the response;

~~s.~~r. The scene locality; ~~and~~

~~t.~~s. Whether the dispatch is a scheduled transport; and

t. The estimated time of arrival, as provided according to subsection (E)(3)(a), if applicable.

K. Assuring Consistent, Compliant Performance: A certificate holder shall:

1. Adopt, implement, and maintain policies and procedures for:

a. Complaint resolution;

b. Assessing the ground ambulance service's compliance with requirements in this Article, Articles 2, 10, or 11 of this Chapter, or A.R.S. Title 36, Chapter 21.1, including the review of:

i. The information provided to an emergency receiving facility for compliance with the protocol required in R9-25-201(E)(2)(d),

ii. Chain of custody for drugs,

iii. Compliance with minimum equipment requirements for a ground ambulance vehicle,

iv. Compliance with requirements in R9-25-201(E)(3), and

v. The quality improvement parameters in subsection (K)(2)(b) related to the provision of services;

c. Notifying the Department within 30 calendar days after completing an assessment in subsection (K)(1)(b), during which an instance of noncompliance was identified, and submitting a corrective action plan that complies with requirements in R9-25-910(E)(2)(a) through (d); and

d. A quality improvement process according to subsection (K)(2);

2. Establish, document, and implement a quality improvement process, as specified in policies and procedures, through which:

a. Data related to initial patient assessment, patient care, transport services provided, and patient status upon arrival at the destination are:

i. Collected continuously;

ii. For the information required in subsection (J)(1), submitted to the Department, in a format specified by the Department and within 48 hours after the beginning of a run, for quality improvement purposes; and

iii. If notified that the submission of information to the Department according to subsection (K)(2)(a)(ii) was unsuccessful, corrected and resubmitted within seven days after notification;

b. Continuous quality improvement processes are developed and implemented to identify, document, and evaluate issues related to the provision of services to ensure quality patient care, including:

i. Care provided to patients with time-critical conditions, including

deviations from national treatment standards for a patient with a time-critical condition;

ii. Transport, including an interfacility transport of a patient that does not have a time-critical condition;

iii. Documentation; and

iv. Patient status upon arrival at the destination;

c. A committee consisting of the administrative medical director, the individual managing the ground ambulance service or designee, and other employees as appropriate:

i. Review the data in subsection (K)(2)(a) and any issues identified in subsection (K)(2)(b) on at least a quarterly basis; and

ii. Implement activities to improve performance when deviations in patient care, transport, or documentation are identified; and

d. The activities in subsection (K)(2)(c) are documented, consistent with A.R.S. §§ 36-2401, 36-2402, and 36-2403; and

3. Ensure that the information required in ~~subsection (J)(2)~~ subsections (J)(2)(a) through (s) is submitted to the Department, in a Department-provided format, and within 48 hours after the receipt of a call or request for service.

L. If a certificate holder has a reasonable basis to believe that a situation or circumstance specified according to A.R.S. § 36-2211(A) has occurred, the certificate holder shall:

1. If applicable, take immediate action to prevent the recurrence of the situation or circumstance;

2. Report the suspected situation or circumstance to the Department and, if applicable, according to A.R.S. § 13-3620 or 46-454;

3. Document:

a. The suspected situation or circumstance;

b. Any action taken according to subsection (L)(1); and

c. The report in subsection (L)(2);

4. Maintain the documentation in subsection (L)(3) for at least 12 months after the date of the report in subsection (L)(2);

5. Initiate an investigation of the situation or circumstance and document the following information within five working days after the report required in subsection (L)(2):

a. The dates, times, and description of the situation or circumstance;

b. A description of any injury to a patient related to the suspected situation or circumstance and any change to the patient's physical, cognitive, functional, or emotional condition;

c. The names of witnesses to the suspected situation or circumstance; and

d. The actions taken by the certificate holder to prevent the suspected situation or circumstance from occurring in the future; and

6. Maintain a copy of the documented information required in subsection (L)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

M. A certificate holder shall notify the Department of a change in the number or location of suboperation stations in the certificate holder's service area, according to A.R.S. § 36-2232(C)(4), and include:

1. The certificate of necessity number for the ground ambulance service;
2. The name of the ground ambulance services on the certificate of necessity;
3. The name, title, address, e-mail address, and telephone number of an individual whom the Department may contact about the notification; and
4. Information about the change, including, as applicable:

a. How the number of suboperation stations is changed from the information on the certificate holder's certificate of necessity;

b. The address of each suboperation station that is being removed from service; and

c. The address, hours of operation, and telephone number of each new suboperation station located within the service area.

N. A certificate holder shall submit to the Department, no later than 180 days after the certificate holder's fiscal year end, the information in the Ambulance Revenue and Cost Report specified in R9-25-909(A) or (C), as appropriate to the certificate holder's business organization.

TITLE 9. HEALTH SERVICES

CHAPTER 25. EMERGENCY MEDICAL SERVICES

ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY

R9-25-908. Operations (Authorized by A.R.S. §§ 36-2204.02, 36-2211, 36-2224, 36-2232, 36-2233, 36-2237, 36-2241)

A. Insurance: A certificate holder shall:

1. Either:
   a. Maintain with an insurance company authorized to transact business in this state:
      i. A minimum single occurrence automobile liability insurance coverage of $1,000,000 for ground ambulance vehicles;
      ii. A minimum single occurrence professional liability insurance coverage for the ground ambulance service of $1,000,000; and
      iii. If the certificate holder provides ALS services or critical care services, a minimum single occurrence professional liability insurance coverage for personnel of the ground ambulance service providing ALS services or critical care services of $1,000,000; or
   b. Be self-insured for the amounts in subsection (A)(1)(a); and
2. Submit to the Department within seven days after renewal of the insurance coverage in subsection (A)(1)(a) or a change in how the insurance coverage in subsection (A)(1)(a) or (b) is obtained:
   a. A copy of the certificate of insurance in subsection (A)(1)(a); or
   b. Documentation of self-insurance according to subsection (A)(1)(b).

B. Record Retention: According to A.R.S. § 36-2241, a certificate holder shall maintain the following records for the Department's review and inspection:

1. The certificate holder's financial statements;
2. All federal and state income tax records;
3. All employee-related expense reports and payroll records;
4. All bank statements and documents used to reconcile accounts;
5. All documents establishing the depreciation of assets, such as schedules or accounting records on ground ambulance vehicles, equipment, office furniture,

and other plant and equipment assets subject to depreciation;

6. All prehospital history incident reports, as specified in subsection (J)(1);
7. All patient billing and reimbursement records;
8. All dispatch records, as specified in subsection (J)(2);
9. All policies and procedures required by this Article or Article 2, 10, or 11 of this Chapter;
10. All plans required by this Article or Article 2, 10, or 11 of this Chapter;
11. Documentation of the analysis of response time performance according to subsection (G)(2);
12. Documentation of the analysis of performance of interfacility transports of patients with no time-critical condition, including patients with a time-sensitive condition, according to subsection (H)(1);
13. Documentation of notification to the Department of instances of noncompliance according to subsection (K)(1)(c);
14. All back-up agreements, contracts, grants, and financial assistance records related to ground ambulance vehicles, ambulance response, and transport;
15. All written complaints about the ground ambulance service; and
16. Information about destroyed or otherwise irretrievable records in a file including:
    a. A list of each record destroyed or otherwise irretrievable,
    b. A description of the circumstances under which each record became destroyed or otherwise irretrievable, and
    c. The date each record was destroyed or became otherwise irretrievable.

C. Staffing: A certificate holder shall ensure that:

1. If a ground ambulance vehicle is marked with a level of service, the ground ambulance vehicle is staffed to provide the level of service identified;
2. An administrative medical director for the ground ambulance service complies with requirements in R9-25-201(F) and R9-25-502(B);
3. Policies and procedures are established, implemented, and maintained that cover:
    a. Job descriptions, duties, and qualifications, including required skills and knowledge for EMCTs and other employees; and
    b. Orientation and in-service education for EMCTs and other employees;
4. An EMCT employed by the ground ambulance service:
    a. Is assigned patient care duties consistent with the EMCT's scope of

practice and the administrative medical director's evaluation of the EMCT's skills and capabilities;

b. Complies with the protocols required in R9-25-201(E)(2);

c. Receives training on the policies and procedures required in R9-25-201(E)(3)(b); and

d. Receives ongoing education, training, or remediation consistent with the policies and procedures required in R9-25-201(E)(3)(b)(x); and

5. Staffing of ground ambulance vehicles:

a. For the provision of BLS or ALS, is consistent with A.R.S. § 36-2239; and

b. Effective January 1, 2025, for critical care services, includes at least one:

i. Paramedic with an additional endorsement, indicating additional training and authorization from the Department to provide critical care services; or

ii. Registered nurse.

D. Communications and Advertising: A certificate holder shall ensure that the ground ambulance service:

1. Makes a good faith effort to communicate information:

a. About its hours of operation to the general public through print media, broadcast media, the Internet, or other means; and

b. About resource availability and deployment to other EMS providers in overlapping and surrounding service areas;

2. Does not advertise that the ground ambulance service:

a. Provides a type of service or level of service other than what is granted in the certificate of necessity,

b. Operates in the service area other than what is granted in the certificate of necessity, or

c. In a manner that circumvents the use of 9-1-1 or another similarly designated emergency telephone number;

3. Establishes, implements, and maintains the protocol for providing information to emergency receiving facility staff concurrent with the transfer of care, required in R9-25-201(E)(2)(d)(i), which includes:

a. The date and time the dispatch was received by the ground ambulance

service;

b. The unique number used by the ground ambulance service to identify the run;

c. The name of the ground ambulance service;

d. The number or other identifier of the ground ambulance vehicle used for the run;

e. The following information about the patient:

i. The patient's name;

ii. The patient's date of birth or age, as available;

iii. The principal reason for requesting services for the patient;

iv. The patient's medical history, including any chronic medical illnesses, known allergies to medications, and medications currently being taken by the patient;

v. The patient's level of consciousness at initial contact and when reassessed;

vi. The patient's pulse rate, respiratory rate, oxygen saturation, and systolic blood pressure at initial contact and when reassessed;

vii. The results of an electrocardiograph, if available;

viii. The patient's glucose level at initial contact and when reassessed, if applicable;

ix. The patient's level of responsiveness score, as applicable, at initial contact and when reassessed;

x. The results of the patient's neurological assessment, if applicable; and

xi. The patient's pain level at initial contact and when reassessed; and

f. Any procedures or other treatment provided to the patient at the scene or during transport, including any agents administered to the patient; and

4. Establishes, implements, and maintains a protocol for providing information to another certificate holder, ambulance service, EMS provider, or health care institution concurrent with the transfer of care, which includes the information in subsections (D)(3)(c), (d), (e), and (f).

E. Dispatch and Scheduling: A certificate holder shall ensure that:

1. A contract or other agreement, including internal policies and procedures, to provide dispatch exists and includes:
    a. Information about other certificate holders with which the certificate holder has a back-up agreement;
    b. The process and parameters under which a ground ambulance vehicle of another certificate holder will be dispatched to respond to a call to which a ground ambulance vehicle of the certificate holder cannot respond;
    c. Except as specified in subsection (E)(2), for an area within the certificate holder's service area that overlaps with another certificate holder's service area, that the nearest ground ambulance vehicle to the patient's location, under either certificate holder that can provide the necessary level of service, will be directed to respond to a call made through 9-1-1 or a similar dispatch system; and
    d. If the entity providing dispatch is external to the ground ambulance service, a requirement that the certificate holder receive a copy of each dispatch made under the contract or other agreement;
2. If a certificate holder has a ground ambulance service contract under R9-25-1104 with a political subdivision, the ground ambulance service contract contains requirements that specify a method for dispatch, which may differ from requirements in subsection (E)(1)(c); and
3. For an interfacility transport of a patient with no time-critical condition:
    a. Unless already specified in a written agreement between the certificate holder and the person requesting the interfacility transport, the entity receiving the request for the interfacility transport provides an estimated time of arrival to the person requesting the interfacility transport at the time that the interfacility transport is requested;
    b. If the estimated time of arrival provided according to subsection (E)(3)(a) changes to a later time, the ground ambulance service, either directly or indirectly, does one of the following:
        i. Contacts another ground ambulance service to respond to the dispatch, based on the ground ambulance service's back-up plan and back-up agreements;
        ii. Provides to the contact at the requesting health care institution

the name and telephone number of another ground ambulance service with which the ground ambulance service has a back-up agreement; or

iii. Provides an amended estimated time of arrival to the person requesting transport that takes into consideration:

(1) The patient's condition and needs, and

(2) Health and safety;

c. Effective January 1, 2025, unless otherwise specified on the certificate holder's certificate of necessity, the actual time of arrival of a ground ambulance vehicle at a health care institution for an interfacility transport of a patient who does not have a time-critical condition is within 60 minutes of the estimated time of arrival in subsection (E)(3)(a) or amended estimated time of arrival in subsection (E)(3)(b)(iii) for at least 90% of the interfacility transports; and

d. If the interfacility transport does not meet the standards in subsection (E)(3)(c), factors that may have contributed to not meeting the standards are considered through the quality improvement process in subsection (K)(2)(b).

F. Transport: A certificate holder:

1. Shall only provide ambulance response or transport within the service area identified in the certificate holder's certificate of necessity except:

a. When authorized by a service area's dispatch, before the service area's ground ambulance vehicle arrives at the scene;

b. According to a back-up agreement; or

c. If the area is not included in the service area of another certificate holder;

2. Except as specified in subsection (F)(3), shall transport a patient in the certificate holder's service area who requests transport; and

3. May deny transport to a patient in the certificate holder's service area:

a. As limited by A.R.S. § 36-2224;

b. If the patient is in a health care institution and the patient's medical condition requires a level of care or monitoring during transport that exceeds the scope of practice of the ambulance attendants' certification;

c. If the transport may result in an immediate threat to the ambulance

attendant's safety, as determined by the ambulance attendant, the certificate holder, the administrative medical director, or a physician providing on-line medical direction and does not affect the ground ambulance service's hours of operation;

d. If the patient is 18 years or age or older, or meets the requirements in A.R.S. § 12-2451, 44-131, or 44-132, and refuses to be transported; or

e. If the patient is in a health care institution and does not meet the federal requirements for medically necessary ground vehicle ambulance transport as identified in 42 CFR 410.40.

G. Response Time Performance: A certificate holder shall ensure that:

1. Response times resulting from a 9-1-1 or similar system dispatch or, if applicable, a request for the interfacility transport of a patient with a time-critical condition comply with requirements of the certificate holder's certificate of necessity;
2. Response time performance, based on the information is subsection (J)(2), is assessed at least every six months for compliance with requirements of the certificate holder's certificate of necessity;
3. The following are reported to the Department annually, in a Department-provided format, concurrent with the submission of the information required in R9-25-909:
   a. Response time data that complies with requirements in A.R.S. § 36-2232(A)(3), and
   b. The results of the response time performance assessments in subsection (G)(2); and
4. If response time performance does not comply with requirements of the certificate holder's certificate of necessity, either:
   a. A corrective action plan, developed according to R9-25-910(E)(2)(a) through (d), is submitted to the Department with the information required in subsection (G)(3); or
   b. The certificate holder submits to the Department with the information required in subsection (G)(3) documentation demonstrating that noncompliance was due to:
      i. A situation specified in A.R.S. § 36-2232(G), or

ii. An external factor beyond the control of the certificate holder.

H. Performance of Interfacility Transports of Patients with No Time-Critical Condition: Effective January 1, 2025, a certificate holder shall ensure that:

1. The performance of interfacility transports of patients with no time-critical condition, including patients with a time-sensitive condition:
   a. Is based on the information in subsection (J)(2);
   b. Is assessed at least every six months;
   c. Includes the analysis of:
      i. The number of calls received;
      ii. The time a call was received;
      iii. The estimated time of arrival;
      iv. The time of arrival at the patient's location; and
      v. Any other information about cancelled calls, amended estimated times of arrival, or delays that may have factored into performance; and
   d. Includes a description of any actions taken by the certificate holder to improve performance;
2. The results of the performance assessments in subsection (H)(1) are reported to the Department annually in a Department-provided format, concurrent with the submission of the information required in R9-25-909; and
3. If the performance of interfacility transports of patients with no time-critical condition does not comply with subsection (E)(3)(c) or requirements of the certificate holder's certificate of necessity, as applicable, either:
   a. A corrective action plan, developed according to R9-25-910(E)(2)(a) through (d), is submitted to the Department with the information required in subsection (H)(2); or
   b. The certificate holder submits to the Department with the information required in subsection (H)(2) documentation demonstrating that noncompliance was due to an external factor beyond the control of the certificate holder.

I. The Department may require that a certificate holder contract for third-party monitoring of response time performance as part of a:

1. Political subdivision contract, unless both parties to the contract waive the

requirement; or

2. Corrective action plan.

J. Records: A certificate holder shall ensure that:

1. A prehospital incident history report, in a Department-provided format, is created for each patient that includes the following information, as available:
    a. The name and identification number of the ground ambulance service;
    b. Information about the software for the storage and submission of the prehospital incident history report;
    c. The unique number assigned to the run;
    d. The unique number assigned to the patient;
    e. Information about the response to the dispatch, including:
        i. The level of service requested;
        ii. Information obtained by the person providing dispatch about the request;
        iii. Information about the ground ambulance vehicle assigned to the dispatch;
        iv. Information about the EMCTs responding to the dispatch;
        v. The priority assigned to the dispatch; and
        vi. Response delays, as applicable;
    f. The date and time that:
        i. The call requesting service was received through the 9-1-1 or similar dispatch system,
        ii. The request was received by the person providing dispatch,
        iii. The ground ambulance service received the dispatch,
        iv. The ground ambulance vehicle left for the patient's location,
        v. The ground ambulance vehicle arrived at the patient's location,
        vi. The EMCTs in the ground ambulance vehicle arrived at the patient's side,
        vii. Transfer of care for the patient occurred at a location other than the destination,
        viii. The ground ambulance vehicle departed the patient's location,
        ix. The ground ambulance vehicle arrived at the destination,
        x. Transfer of care for the patient occurred at the destination, and

xi. The ground ambulance vehicle was available to take another call;

g. Information about the patient, including:

i. The patient's first and last name;

ii. The address of the patient's residence;

iii. The county of the patient's residence;

iv. The country of the patient's residence;

v. The patient's gender, race, ethnicity, and age;

vi. The patient's estimated weight;

vii. The patient's date of birth; and

viii. If the patient has an alternate residence, the address of the alternate residence;

h. The primary method of payment for services and anticipated level of payment;

i. Information about the scene, including:

i. Specific information about the location of the scene;

ii. Whether the ground ambulance vehicle was first on the scene;

iii. The number of patients at the scene;

iv. Whether the scene was the location of a mass casualty incident; and

v. If the scene was the location of a mass casualty incident, triage information;

j. Information about the reason for requesting service for the patient, including:

i. The date and time of onset of symptoms and when the patient was last well;

ii. Information about the principal reason the patient needs services;

iii. The patient's symptoms;

iv. The results of the EMCT's initial assessment of the patient;

v. If the patient was injured, information about the injury and the cause of the injury;

vi. If the patient experienced a cardiac arrest, information about the etiology of the cardiac arrest and subsequent treatment provided; and

vii. For an interfacility transport, the reason for the transport;

k. Information about any specific barriers to providing care to the patient;

l. Information about the patient's medical history, including;

i. Known allergies to medications,

ii. Surgical history,

iii. Current medications, and

iv. Alcohol or drug use;

m. Information about the patient's current medical condition, including the information in subsections (D)(2)(e)(v) through (xi) and the time and method of assessment;

n. Information about agents administered to the patient, including the dose and route of administration, time of administration, and the patient's response to the agent;

o. If not specifically included under subsection (J)(1)(l), (l)(iv), (m), or (n), the information required in A.A.C. R9-4-602(A);

p. Information about any procedures performed on the patient and the patient's response to the procedure;

q. Whether the patient was transported and, if so, information about the transport;

r. Information about the destination of the transport, including the reason for choosing the destination;

s. Whether transfer of care for the patient to another EMS provider or ambulance service occurred and, if so, identification of the EMS provider or ambulance service;

t. Unless transfer of care for the patient to another EMS provider or ambulance service occurred, information about:

i. Whether the destination facility was notified that the patient being transported has a time-critical condition and the time of notification,

ii. The disposition of the patient at the destination, and

iii. The disposition of the run;

u. Any other narrative information about the patient, care receive by the patient, or transport; and

v. The name and certification level of the EMCT providing the information; and

2. Dispatch records for each call or request for service, including all cancelled runs, contain the following information, in a Department-provided format:

a. The name of the ground ambulance service;

b. The date;

c. Level of service;

d. Type of service;

e. Staffing of the run;

f. Time of receipt of the call;

g. Time of the dispatch;

h. The estimated time of arrival, as provided according to subsection (E)(3)(a) if applicable;

i. Departure time to the patient's location;

j. Address of the patient's location;

k. Time of arrival at the patient's location;

l. Departure time to the destination health care institution;

m. Name and address of the destination health care institution;

n. Time of arrival at the destination health care institution;

o. Any type of delay, if applicable;

p. The unique reference number used by the ground ambulance service to identify the patient, dispatch, or run;

q. The number assigned to the ground ambulance vehicle by the certificate holder;

r. The priority assigned by a certificate holder to the response;

s. The scene locality; and

t. Whether the dispatch is a scheduled transport.

K. Assuring Consistent, Compliant Performance: A certificate holder shall:

1. Adopt, implement, and maintain policies and procedures for:

a. Complaint resolution;

b. Assessing the ground ambulance service's compliance with requirements in this Article, Articles 2, 10, or 11 of this Chapter, or A.R.S. Title 36, Chapter 21.1, including the review of:

i. The information provided to an emergency receiving facility for compliance with the protocol required in R9-25-201(E)(2)(d),

ii. Chain of custody for drugs,

iii. Compliance with minimum equipment requirements for a ground ambulance vehicle,

iv. Compliance with requirements in R9-25-201(E)(3), and

v. The quality improvement parameters in subsection (K)(2)(b) related to the provision of services;

c. Notifying the Department within 30 calendar days after completing an assessment in subsection (K)(1)(b), during which an instance of noncompliance was identified, and submitting a corrective action plan that complies with requirements in R9-25-910(E)(2)(a) through (d); and

d. A quality improvement process according to subsection (K)(2);

2. Establish, document, and implement a quality improvement process, as specified in policies and procedures, through which:

a. Data related to initial patient assessment, patient care, transport services provided, and patient status upon arrival at the destination are:

i. Collected continuously;

ii. For the information required in subsection (J)(1), submitted to the Department, in a format specified by the Department and within 48 hours after the beginning of a run, for quality improvement purposes; and

iii. If notified that the submission of information to the Department according to subsection (K)(2)(a)(ii) was unsuccessful, corrected and resubmitted within seven days after notification;

b. Continuous quality improvement processes are developed and implemented to identify, document, and evaluate issues related to the provision of services to ensure quality patient care, including:

i. Care provided to patients with time-critical conditions, including deviations from national treatment standards for a patient with a time-critical condition;

ii. Transport, including an interfacility transport of a patient that does not have a time-critical condition;

iii. Documentation; and

iv. Patient status upon arrival at the destination;

c. A committee consisting of the administrative medical director, the individual managing the ground ambulance service or designee, and other employees as appropriate:

i. Review the data in subsection (K)(2)(a) and any issues identified in subsection (K)(2)(b) on at least a quarterly basis; and

ii. Implement activities to improve performance when deviations in patient care, transport, or documentation are identified; and

d. The activities in subsection (K)(2)(c) are documented, consistent with A.R.S. §§ 36-2401, 36-2402, and 36-2403; and

3. Ensure that the information required in subsection (J)(2) is submitted to the Department, in a Department-provided format, and within 48 hours after the receipt of a call or request for service.

L. If a certificate holder has a reasonable basis to believe that a situation or circumstance specified according to A.R.S. § 36-2211(A) has occurred, the certificate holder shall:

1. If applicable, take immediate action to prevent the recurrence of the situation or circumstance;

2. Report the suspected situation or circumstance to the Department and, if applicable, according to A.R.S. § 13-3620 or 46-454;

3. Document:

a. The suspected situation or circumstance;

b. Any action taken according to subsection (L)(1); and

c. The report in subsection (L)(2);

4. Maintain the documentation in subsection (L)(3) for at least 12 months after the date of the report in subsection (L)(2);

5. Initiate an investigation of the situation or circumstance and document the following information within five working days after the report required in subsection (L)(2):

a. The dates, times, and description of the situation or circumstance;

b. A description of any injury to a patient related to the suspected situation or circumstance and any change to the patient's physical, cognitive, functional, or emotional condition;

c. The names of witnesses to the suspected situation or circumstance; and

d. The actions taken by the certificate holder to prevent the suspected situation or circumstance from occurring in the future; and

6. Maintain a copy of the documented information required in subsection (L)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

M. A certificate holder shall notify the Department of a change in the number or location of suboperation stations in the certificate holder's service area, according to A.R.S. § 36-2232(C)(4), and include:

1. The certificate of necessity number for the ground ambulance service;
2. The name of the ground ambulance services on the certificate of necessity;
3. The name, title, address, e-mail address, and telephone number of an individual whom the Department may contact about the notification; and
4. Information about the change, including, as applicable:
   a. How the number of suboperation stations is changed from the information on the certificate holder's certificate of necessity;
   b. The address of each suboperation station that is being removed from service; and
   c. The address, hours of operation, and telephone number of each new suboperation station located within the service area.

N. A certificate holder shall submit to the Department, no later than 180 days after the certificate holder's fiscal year end, the information in the Ambulance Revenue and Cost Report specified in R9-25-909(A) or (C), as appropriate to the certificate holder's business organization.

Statutory Authority for Rules in 9 A.A.C. 25, Article 9

36-132. <u>Department of health services; functions; contracts</u>

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information to promote good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of educating children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in coordinating local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with

providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in enforcing the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes and behavioral-supported group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that a licensing period shall not be longer than three years. The department is authorized to conduct an inspection

of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. <u>Powers and duties of director; compensation of personnel; rules; definitions</u>

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system,

prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds

that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale

or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between

consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of

these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement

that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-2201. <u>Definitions</u>

In this chapter, unless the context otherwise requires:

1. "Administrative medical direction" means supervision of emergency medical care technicians by a base hospital medical director, administrative medical director or basic life support medical director. For the purposes of this paragraph, "administrative medical director" means a physician who is licensed pursuant to title 32, chapter 13 or 17 and who provides direction within the emergency medical services and trauma system.

2. "Advanced emergency medical technician" means a person who has been trained in an advanced emergency medical technician program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.

3. "Advanced life support" means the level of assessment and care identified in the scope of

practice approved by the director for the advanced emergency medical technician, emergency medical technician I-99 and paramedic.

4. "Advanced life support base hospital" means a health care institution that offers general medical and surgical services, that is certified by the director as an advanced life support base hospital and that is affiliated by written agreement with a licensed ambulance service, municipal rescue service, fire department, fire district or health services district for medical direction, evaluation and control of emergency medical care technicians.

5. "Ambulance":

(a) Means any publicly or privately owned surface, water or air vehicle, including a helicopter, that contains a stretcher and necessary medical equipment and supplies pursuant to section 36-2202 and that is especially designed and constructed or modified and equipped to be used, maintained or operated primarily to transport individuals who are sick, injured or wounded or who require medical monitoring or aid.

(b) Does not include a surface vehicle that is owned and operated by a private sole proprietor, partnership, private corporation or municipal corporation for the emergency transportation and in-transit care of its employees or a vehicle that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, care or treatment during transport and that is not advertised as having medical equipment and supplies or ambulance attendants.

6. "Ambulance attendant" means any of the following:

(a) An emergency medical technician, an advanced emergency medical technician, an emergency medical technician I-99 or a paramedic whose primary responsibility is the care of patients in an ambulance and who meets the standards and criteria adopted pursuant to section 36-2204.

(b) An emergency medical responder who is employed by an ambulance service operating under section 36-2202 and whose primary responsibility is driving an ambulance.

(c) A physician who is licensed pursuant to title 32, chapter 13 or 17.

(d) A professional nurse who is licensed pursuant to title 32, chapter 15 and who meets the state board of nursing criteria to care for patients in the prehospital care system.

(e) A professional nurse who is licensed pursuant to title 32, chapter 15 and whose primary responsibility is the care of patients in an ambulance during an interfacility transport.

7. "Ambulance service" means a person who owns and operates one or more ambulances.

8. "Basic life support" means the level of assessment and care identified in the scope of practice approved by the director for the emergency medical responder and emergency medical technician.

9. "Bureau" means the bureau of emergency medical services and trauma system in the department.

10. "Centralized medical direction communications center" means a facility that is housed within a hospital, medical center or trauma center or a freestanding communication center that meets the following criteria:

(a) Has the ability to communicate with ambulance services and emergency medical services

providers rendering patient care outside of the hospital setting via radio and telephone.

(b) Is staffed twenty-four hours a day seven days a week by at least a physician licensed pursuant to title 32, chapter 13 or 17.

11. "Certificate of necessity" means a certificate that is issued to an ambulance service by the department and that describes the following:

(a) The service area.

(b) The level of service.

(c) The type of service.

(d) The hours of operation.

(e) The effective date.

(f) The expiration date.

(g) The legal name and address of the ambulance service.

(h) The any limiting or special provisions the director prescribes.

12. "Council" means the emergency medical services council.

13. "Department" means the department of health services.

14. "Director" means the director of the department of health services.

15. "Emergency medical care technician" means an individual who has been certified by the department as an emergency medical technician, an advanced emergency medical technician, an emergency medical technician I-99 or a paramedic.

16. "Emergency medical responder" as an ambulance attendant, whose primary responsibility is driving an ambulance, means a person who has successfully completed training in an emergency medical responder program that is certified by the director or is approved by the emergency medical services provider's administrative medical director on file with the department or in an equivalent training program.

17. "Emergency medical responder program" means a program that has been submitted for review by the department and includes at least the following:

(a) Emergency vehicle driver training.

(b) Cardiopulmonary resuscitation certification.

(c) Automated external defibrillator training.

(d) Training in the use of noninvasive diagnostic devices, including blood glucose monitors and pulse oximeters.

(e) Training on obtaining a patient's vital signs, including blood pressure, pulse and respiratory rate.

18. "Emergency medical services" means those services required following an accident or an emergency medical situation:

(a) For on-site emergency medical care.

(b) To transport the sick or injured by a licensed ground or air ambulance.

(c) In using emergency communications media.

(d) In using emergency receiving facilities.

(e) In administering initial care and preliminary treatment procedures by emergency medical care technicians.

19. "Emergency medical services provider" means any governmental entity, quasi-governmental entity or corporation whether public or private that renders emergency medical services in this state.

20. "Emergency medical technician" means a person who has been trained in an emergency medical technician program certified by the director or in an equivalent training program and who is certified by the director as qualified to render services pursuant to section 36-2205.

21. "Emergency receiving facility" means a licensed health care institution that offers emergency medical services, is staffed twenty-four hours a day and has a physician on call.

22. "Fit and proper" means that the director determines that an applicant for a certificate of necessity or a certificate holder has the expertise, integrity, fiscal competence and resources to provide ambulance service in the service area.

23. "Medical record" means any patient record, including clinical records, prehospital care records, medical reports, laboratory reports and statements, any file, film, record or report or oral statements relating to diagnostic findings, treatment or outcome of patients, whether written, electronic or recorded, and any information from which a patient or the patient's family might be identified.

24. "National certification organization" means a national organization that tests and certifies the ability of an emergency medical care technician and whose tests are based on national education standards.

25. "National education standards" means the emergency medical services education standards of the United States department of transportation or other similar emergency medical services education standards developed by that department or its successor agency.

26. "Paramedic" means a person who has been trained in a paramedic program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.

27. "Physician" means any person licensed pursuant to title 32, chapter 13 or 17.

28. "Police dog":

(a) Means a specially trained dog that is owned or used by a law enforcement department or agency of this state or any political subdivision of this state and that is used in the course of the department's or agency's official work.

(b) Includes a search and rescue dog, service dog, accelerant detection canine or other dog that is in use by the law enforcement department or agency for official duties.

29. "Stretcher van" means a vehicle that contains a stretcher and that is operated to accommodate an incapacitated person or person with a disability who does not require

medical monitoring, aid, care or treatment during transport.

30. "Suboperation station" means a physical facility or location at which an ambulance service conducts operations for the dispatch of ambulances and personnel and that may be staffed twenty-four hours a day or less as determined by system use.

31. "Trauma center" means any acute care hospital that provides in-house twenty-four-hour daily dedicated trauma surgical services that is designated pursuant to section 36-2225.

32. "Trauma registry" means data collected by the department on trauma patients and on the incidence, causes, severity, outcomes and operation of a trauma system and its components.

33. "Trauma system" means an integrated and organized arrangement of health care resources having the specific capability to perform triage, transport and provide care.

34. "Validated testing procedure" means a testing procedure that includes practical skills, or attests practical skills proficiency on a form developed by the department by the educational training program, identified pursuant to section 36-2204, paragraph 2, that is certified as valid by an organization capable of determining testing procedure and testing content validity and that is recommended by the medical direction commission and the emergency medical services council before the director's approval.

35. "Wheelchair van" means a vehicle that contains or that is designed and constructed or modified to contain a wheelchair and that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, aid, care or treatment during transport.

36-2202. <u>Duties of the director; qualifications of medical director</u>

A. The director shall:

1. Appoint a medical director of the emergency medical services and trauma system.

2. Adopt standards and criteria for the denial or granting of certification and recertification of emergency medical care technicians. These standards shall allow the department to certify qualified emergency medical care technicians who have completed statewide standardized training required under section 36-2204, paragraph 1 and a standardized certification test required under section 36-2204, paragraph 2, who hold valid certification with a national certification organization or who have completed training and testing by the United States armed forces at a level comparable to the national standards for emergency medical care technicians. Before the director may consider approving a statewide standardized training or a standardized certification test, or both, each of these must first be recommended by the medical direction commission and the emergency medical services council to ensure that the standardized training content is consistent with national education standards and that the standardized certification test examines comparable material to that examined in the tests of a national certification organization.

3. Adopt standards and criteria that pertain to the quality of emergency care pursuant to section 36-2204.

4. Adopt rules necessary to carry out this chapter. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated.

5. Adopt reasonable medical equipment, supply, staffing and safety standards, criteria and procedures to issue a certificate of registration to operate an ambulance.

6. Maintain a state system for recertifying emergency medical care technicians, except as otherwise provided by section 36-2202.01, that is independent from any national certification organization recertification process. This system shall allow emergency medical care technicians to choose to be recertified under the state or the national certification organization recertification system subject to subsection H of this section.

B. Emergency medical technicians who choose the state recertification process shall recertify in one of the following ways:

1. Successfully completing an emergency medical technician refresher course approved by the department.

2. Successfully completing an emergency medical technician challenge course approved by the department.

3. For emergency medical care technicians who are currently certified at the emergency medical technician level by the department, attesting on a form provided by the department that the applicant holds a valid and current cardiopulmonary resuscitation certification, has and will maintain documented proof of a minimum of twenty-four hours of continuing medical education within the last two years consistent with department rules and has functioned in the capacity of an emergency medical technician for at least two hundred forty hours during the last two years.

C. After consultation with the emergency medical services council, the director may authorize pilot programs designed to improve the safety and efficiency of ambulance inspections for governmental or quasi-governmental entities that provide emergency medical services in this state.

D. The rules, standards and criteria adopted by the director pursuant to subsection A, paragraphs 2, 3, 4 and 5 of this section shall be adopted in accordance with title 41, chapter 6, except that the director may adopt on an emergency basis pursuant to section 41-1026 rules relating to the regulation of ambulance services in this state necessary to protect the public peace, health and safety in advance of adopting rules, standards and criteria as otherwise provided by this subsection.

E. The director may waive the requirement for compliance with a protocol adopted pursuant to section 36-2205 if the director determines that the techniques, drug formularies or training makes the protocol inconsistent with contemporary medical practices.

F. The director may suspend a protocol adopted pursuant to section 36-2205 if the director does all of the following:

1. Determines that the rule is not in the public's best interest.

2. Initiates procedures pursuant to title 41, chapter 6 to repeal the rule.

3. Notifies all interested parties in writing of the director's action and the reasons for that action. Parties interested in receiving notification shall submit a written request to the director.

G. To be eligible for appointment as the medical director of the emergency medical services and trauma system, the person shall be qualified in emergency medicine and shall be

licensed as a physician in one of the states of the United States.

H. Applicants for certification shall apply to the director for certification. Emergency medical care technicians shall apply for recertification to the director every two years. The director may extend the expiration date of an emergency medical care technician's certificate for thirty days. The department shall establish a fee for this extension by rule. Emergency medical care technicians shall pass an examination administered by the department as a condition for recertification only if required to do so by the advanced life support base hospital's medical director or the emergency medical care technician's medical director.

I. The medical director of the emergency medical services and trauma system is exempt from title 41, chapter 4, articles 5 and 6 and is entitled to receive compensation pursuant to section 38-611, subsection A.

J. The standards, criteria and procedures adopted by the director pursuant to subsection A, paragraph 5 of this section shall require that ambulance services:

1. Providing interfacility transportation in any certificate of necessity area of this state have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) or (b) staffing an ambulance while transporting a patient.

2. Serving a rural or wilderness certificate of necessity area with a population of less than ten thousand persons have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) or (b) staffing an ambulance while transporting a patient.

3. Serving a population of ten thousand persons or more have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) staffing an ambulance while transporting a patient.

K. If the department determines there is not a qualified administrative medical director, the department shall ensure the provision of administrative medical direction for an emergency medical technician if the emergency medical technician meets all of the following criteria:

1. Is employed by a nonprofit or governmental provider employing less than twelve full-time emergency medical technicians.

2. Stipulates to the inability to secure a physician who is willing to provide administrative medical direction.

3. Stipulates that the provider agency does not provide administrative medical direction for its employees.

36-2204.02. <u>Emergency medical services providers; investigations</u>

A. In lieu of the requirements of section 36-2211, the director may authorize an ambulance service or emergency medical services provider to investigate, discipline or determine the fitness of an employee to continue to provide patient care. This authority does not apply to the conviction of, a plea of guilty or no contest to or admission in a court proceeding to the elements of a felony. The employer listed on the emergency medical care technician's or ambulance attendant's certification or recertification application may limit the practice of the

emergency medical care technician or ambulance attendant during the investigation if the employer meets all of the following requirements:

1. Has separate investigative or supervisory staff to conduct an investigation.

2. Has an employee assistance program for counseling.

3. Has policies and procedures for drug testing through urinalysis or other generally accepted methods.

4. Has policies and procedures for monitoring of personnel who are suspected of or who have been convicted of substance abuse.

B. An ambulance service or emergency medical services provider that conducts its own disciplinary investigations pursuant to subsection A of this section shall report the following to the medical director of the emergency medical services and trauma system:

1. The nature of the allegation.

2. The level of patient care being delivered by the employee and the supervision of the employee during the investigation or rehabilitative period, or both.

3. The final outcome of the investigation and the final recommendation on the employee's certification status.

C. The decisions of the employer are appealable under the employer's personnel policies and procedures. Except as provided in section 41-1092.08, subsection H, the final administrative decisions of the director are subject to judicial review pursuant to title 12, chapter 7, article 6.

36-2211. Grounds for censure, probation, suspension or revocation of emergency medical care technician certificate; proceedings; civil penalty; judicial review

A. The medical director of the emergency medical services and trauma system, on behalf of the director, may censure or place on probation an emergency medical care technician or suspend or revoke the certification issued to any emergency medical care technician pursuant to this article for any of the following causes:

1. Unprofessional conduct.

2. Conviction of, a plea of guilty or no contest to or admission in a court proceeding to the elements of a felony or of a misdemeanor involving moral turpitude during the time that a person is certified as an emergency medical care technician. The record of conviction or a copy of the record certified by the clerk of the court or by the judge by whom the person was sentenced is conclusive evidence of conviction.

3. Physical or mental incompetence to provide emergency medical services as an emergency medical care technician.

4. Gross incompetence or gross negligence in the provision of emergency medical services as an emergency medical care technician.

5. Wilful fraud or misrepresentation in the provision of emergency medical services as an emergency medical care technician or in the admission to that practice.

6. Use of any narcotic or dangerous drug or intoxicating beverage to an extent that the use impairs the ability to safely conduct the provision of emergency medical services as an emergency medical care technician.

7. The wilful violation of this chapter or the rules adopted pursuant to this chapter.

B. The medical director of the emergency medical services and trauma system on the medical director's own motion may investigate any evidence that appears to show the existence of any of the causes set forth in subsection A of this section. The medical director shall investigate the report under oath of any person that appears to show the existence of any of the causes set forth in subsection A of this section. Any person reporting pursuant to this section who provides the information in good faith is not subject to liability for civil damages as a result.

C. If, in the opinion of the medical director of the emergency medical services and trauma system, it appears the information is or may be true, the medical director shall request an informal interview with the emergency medical care technician. The interview shall be requested by the medical director in writing, stating the reasons for the interview and setting a date not less than ten days from the date of the notice for conducting the interview. The written request for an interview shall also state that if the medical director finds that cause exists for censure or probation or the suspension or revocation of the certificate the medical director may impose a civil penalty of not more than three hundred fifty dollars for each occurrence of cause as provided in subsection A of this section. The request for an interview shall also state that each day a cause for discipline exists constitutes a separate offense.

D. Following the investigation, including an informal interview if requested, and together with any mental, physical or professional competence examination as the medical director of the emergency medical services and trauma system deems necessary, the medical director may proceed in the following manner:

1. If the medical director finds that the evidence obtained pursuant to subsections B and C of this section does not warrant censure or probation of the emergency medical care technician or suspension or revocation of a certificate, the medical director shall notify the emergency medical care technician and terminate the investigation.

2. If the medical director finds that the evidence obtained pursuant to subsections B and C of this section does not warrant suspension or revocation of a certificate but does warrant censure or probation, the medical director may do either of the following:

(a) Issue a decree of censure.

(b) Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate and educate the emergency medical care technician. Failure to comply with any probation is cause for filing a complaint and holding a formal hearing as provided in paragraph 3 of this subsection.

3. If the medical director finds that the evidence obtained pursuant to subsections B and C of this section warrants suspension or revocation of a certificate issued under this article, or if the emergency medical care technician under investigation refuses to attend the informal interview authorized in subsection C of this section, a complaint shall be issued and formal proceedings shall be initiated. All proceedings pursuant to this paragraph shall be conducted

pursuant to title 41, chapter 6, article 10.

E. If after a hearing as provided in this section any cause for censure, probation, suspension or revocation is found to exist, the emergency medical care technician is subject to censure or probation or suspension or revocation of the certificate or any combination of these for a period of time or permanently and under conditions as the medical director of the emergency medical services and trauma system deems appropriate.

F. In addition to other disciplinary action provided pursuant to this section, the medical director of the emergency medical services and trauma system may impose a civil penalty of not more than three hundred fifty dollars for each occurrence of cause as provided in subsection A of this section not to exceed twenty-five hundred dollars. Each day that cause for discipline exists constitutes a separate offense. All monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

G. Except as provided in section 41-1092.08, subsection H, final decisions of the medical director of the emergency medical services and trauma system are subject to judicial review pursuant to title 12, chapter 7, article 6.

36-2224. Interfacility transportation of patients; requirements

An ambulance service that transports a patient from a hospital within its certificated area to a hospital outside the certificated area is only required to transport that patient under medical direction to the nearest most appropriate facility as defined by federal medicare guidelines for ambulance services. This section shall not apply to any patient transport initiated or undertaken pursuant to the provisions of the federal emergency medical treatment and active labor act.

36-2232. Director; powers and duties; regulation of ambulance services; inspections; response time compliance; mileage rate calculation factors

A. The director shall adopt rules to regulate the operation of ambulances and ambulance services in this state. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated. The rules shall provide for the department to do the following:

1. Consistent with the requirements of subsection H of this section, determine, fix, alter and regulate just, reasonable and sufficient rates and charges for the provision of ambulances, including rates and charges for advanced life support service, basic life support service, patient loaded mileage, standby waiting, subscription service contracts and other contracts for services related to the provision of ambulances. The director shall inform all ambulance services of the procedures and methodology used to determine ambulance rates or charges.

2. Ensure evidence-based quality patient care is the priority for decision-making.

3. Regulate operating and response times of ambulances to meet the needs of the public and to ensure adequate service. The rules adopted by the director for certificated ambulance service response times shall include uniform standards for urban, suburban, rural and wilderness geographic areas within the certificate of necessity based on, at a minimum, population density and geographic and medical considerations. The calculation of response times shall begin when the public safety answering point contacts an ambulance service for

dispatch and conclude when the ambulance service arrives at the dispatched location. On-scene arrival times for response time measurement shall be documented by the ambulance service using dispatch or global positioning system data, or a combination of both, and kept on file. Response time data that is compliant with the health insurance portability and accountability act of 1996 shall be filed annually with the department. When dispatch or global positioning system connectivity is not available, the ambulance service shall manually document on-scene arrival times for response time measurement. The response time data shall be filed in a department-approved format, and the department shall make the response time data publicly available.

4. Review response times established pursuant to paragraph 3 of this subsection with the ambulance service and update the response times based on, at a minimum, population density and geographic and medical considerations, and the financial impact on rates and charges, every six years. One additional review each six-year period may be requested by a city, town, fire district or fire authority whose jurisdictional boundaries in whole or in part are within the service area of a certificate of necessity or an existing certificate of necessity holder within the service area of the certificate of necessity.

5. Determine, fix, alter and regulate bases of operation. The director may issue a certificate of necessity to more than one ambulance service within any base of operation. For the purposes of this paragraph, "base of operation" means a service area granted under a certificate of necessity.

6. Issue, amend, transfer, suspend or revoke certificates of necessity under terms consistent with this article.

7. Prescribe a uniform system of accounts to be used by ambulance services that conforms to standard accounting forms and principles for the ambulance industry and generally accepted accounting principles.

8. Require the filing of an annual financial report and other data. These rules shall require an ambulance service to file the report with the department not later than one hundred eighty days after the completion of its annual accounting period.

9. Regulate ambulance services in all matters affecting services to the public to the end that this article may be fully carried out.

10. Prescribe bonding requirements, if any, for ambulance services granted authority to provide any type of subscription service.

11. Offer technical assistance to ambulance services to ensure compliance with the rules.

12. Offer technical assistance to ambulance services in order to obtain or to amend a certificate of necessity.

13. Inspect, at a maximum of twelve-month intervals, each ambulance registered pursuant to section 36-2212 to ensure that the vehicle is operational and safe and that all required medical equipment is operational. At the request of the provider, the inspection may be performed by a facility approved by the director. If a provider requests that the inspection be performed by a facility approved by the director, the provider shall pay the cost of the inspection.

B. The director may require any ambulance service offering subscription service contracts to obtain a bond in an amount determined by the director that is based on the number of subscription service contract holders and to file the bond with the director to protect all

subscription service contract holders in this state who are covered under that subscription contract.

C. An ambulance service shall:

1. Maintain, establish, add, move or delete suboperation stations within its base of operation to ensure that the ambulance service meets the established response times or those approved by the director in a political subdivision contract.

2. Determine the operating hours of its suboperation stations to provide for coverage of its base of operation.

3. Provide the department with a list of suboperation station locations.

4. Notify the department not later than thirty days after the ambulance service makes a change in the number or location of its suboperation stations.

5. Beginning January 1, 2024, install and maintain an electronic global positioning system monitoring device in each vehicle that is used for transport to record on-scene arrival times for response time measurement. The department shall provide a waiver on a department-approved form to an ambulance service that can reasonably demonstrate it is unable to meet the requirements of this paragraph.

D. At any time, the director or the director's agents may:

1. Inquire into the operation of an ambulance service, including a person operating an ambulance that has not been issued a certificate of registration or a person who does not have or is operating outside of a certificate of necessity.

2. Conduct on-site inspections of facilities, communications equipment, vehicles, procedures, materials and equipment.

3. Review the qualifications of ambulance attendants.

E. If all ambulance services that have been granted authority to operate within the same service area or that have overlapping certificates of necessity apply for uniform rates and charges, the director may establish uniform rates and charges for the service area.

F. In consultation with the medical director of the emergency medical services and trauma system, the emergency medical services council and the medical direction commission, the director of the department of health services shall establish protocols for ambulance services to refer and advise a patient or transport a patient by the most appropriate means to the most appropriate provider of medical services based on the patient's condition. The protocols shall include triage and treatment protocols that allow all classifications of emergency medical care technicians responding to a person who has accessed 911, or a similar public dispatch number, for a condition that does not pose an immediate threat to life or limb to refer and advise a patient or transport a patient to the most appropriate health care institution as defined in section 36-401 based on the patient's condition, taking into consideration factors including patient choice, the patient's health care provider, specialized health care facilities and local protocols.

G. The director, when reviewing an ambulance service's response time compliance with its certificate of necessity, shall consider in addition to other factors the effect of hospital diversion, delayed emergency department admission and the number of ambulances engaged in response or transport in the affected area.

H. The department shall incorporate all of the following factors when calculating the proposed mileage rate:

1. The cost of licensure and registration of each ground ambulance vehicle.

2. The cost of fuel.

3. The cost of ground ambulance vehicle maintenance.

4. The cost of ground ambulance vehicle repair.

5. The cost of tires.

6. The cost of ground ambulance vehicle insurance.

7. The cost of mechanic wages, benefits and payroll taxes.

8. The cost of loan interest related to the ground ambulance vehicles.

9. The cost of the weighted allocation of overhead.

10. The cost of ground ambulance vehicle depreciation.

11. The cost of reserves for replacement of ground ambulance vehicles and equipment.

36-2233. Certificate of necessity to operate an ambulance service; notification of interested parties; exceptions; service areas

A. Any person wishing to operate an ambulance service in this state shall apply to the department on a form prescribed by the director for a certificate of necessity.

B. Within one hundred eighty days after receiving an application for a certificate of necessity as prescribed in this section, the director shall make a determination based on whether necessity for the ambulance service is found to exist and the applicant meets the requirements of subsection F of this section. If the director requests additional information from the applicant after initial review, the applicant shall have thirty business days to respond. On request, the director may give the applicant one additional period of thirty business days to respond. If the applicant fails to respond to the director's request for additional information, the department shall deem the initial or amended application withdrawn. An application deemed withdrawn is not an appealable agency action pursuant to title 41, chapter 6, article 10. The applicant may appeal a denial only pursuant to section 36-2234. The one hundred eighty-day period for the director to make the determination of necessity does not include the time the applicant uses to respond to requests for additional information.

C. On receipt of an initial or amended application for a certificate of necessity, the department shall post a notice of the application on its website. Within thirty days after the department posts a notice pursuant to this subsection, any interested party may provide information to the director on a form in a department-approved format for consideration. If an interested party fails to respond to the notice within sixty days in a department-approved format, the information may not be considered during the review of the application.

D. For the purposes of this section, a city, town, fire district, fire authority or tribal government whose jurisdictional boundaries in whole or in part are within the service area of a certificate of necessity, an existing certificate of necessity holder within the service area of

the certificate of necessity or a hospital that is licensed pursuant to chapter 4 of this title and that is located within the service area of a certificate of necessity is considered to be an interested party as a matter of law.

E. All interested parties shall be notified of any application for an initial or amended certificate of necessity within fifteen days after the application is filed, within fifteen days after the application is complete and within fifteen days after a decision by the director. The director's decision pursuant to subsection F of this section is final unless appealed pursuant to section 36-2234, subsection A.

F. The director shall issue a certificate of necessity if all of the following apply:

1. The director finds that public necessity requires the service or any part of the service proposed by the applicant.

2. The director finds that the applicant is fit and proper to provide the service.

3. The applicant has paid the appropriate fees pursuant to section 36-2240.

4. The applicant has filed a surety bond pursuant to section 36-2237.

G. A certificate of necessity issued pursuant to subsection F of this section shall be for all or part of the service proposed by the applicant as determined necessary by the director for public convenience and necessity.

H. This section does not require a certificate of necessity for:

1. Vehicles and persons that are exempt from a certificate of registration pursuant to section 36-2217.

2. Ambulance services operating under temporary authority pursuant to section 36-2242.

I. The director may grant a service area by one or any combination of the following descriptions:

1. Metes and bounds.

2. A city, town or political subdivision not limited to a specific date. The merger or consolidation of two or more fire districts pursuant to section 48-820 or 48-822 does not expand the service area boundaries of an existing certificate of necessity.

3. A city, town or political subdivision as of a specific date that does not include annexation.

36-2237. <u>Required insurance, financial responsibility or bond; revocation for failure to comply</u>

A. The director shall not issue a certificate of necessity to an ambulance service unless the service has filed with the department a certificate of insurance or other evidence of financial responsibility in an amount the director deems necessary to adequately protect the interests of the public. The liability insurance shall bind the insurer to pay compensation for injuries to persons and for loss or damage to property resulting from the negligent operation of the ambulance service.

B. If an application for a certificate of necessity includes any type of subscription service contract and, in the director's discretion, a surety bond is necessary pursuant to section 36-2232, the director shall not issue a certificate of necessity until the applicant has filed a

surety bond with the director in the form and amount determined by him on which bond the applicant is the principal obligor and this state is the obligee. The director shall approve the bond and the bond must be with a surety company authorized to transact business in this state as surety on the bond. The bond must be conditioned on the payment by the applicant to any subscribers that may be parties to any type of subscription service contract.

C. The director shall fix the total amount of the bond required and the director may increase or decrease the bond amount subject to criteria adopted by rule and regulation.

D. The director shall revoke the certificate of necessity of any ambulance service which fails to comply with this section.

36-2241. Required records; inspection by the department

A. Pursuant to rules adopted by the director, an owner of an ambulance service shall maintain and keep within this state reasonable records, books and other data the director requires to enforce the provisions of this article. These records, books and other data shall not be destroyed for a period of three years after they are recorded. The records, books and other data shall be open to inspection by the department during reasonable office hours if the department is conducting an investigation into the operation of an ambulance service pursuant to section 36-2245.

B. If the director is holding a public rate increase hearing pursuant to section 36-2234, the department may inspect the records, books and other data to verify the truth and accuracy of these documents. The department shall conduct the inspection of these documents for a rate increase hearing only during reasonable office hours and only after giving the service at least one working day's notice.

C. If an audit is required, the department shall accept a certified audit that is performed by an independent auditor at the provider's expense in place of a department audit if the audit:

1. Is conducted in accordance with generally accepted auditing standards.

2. Includes findings regarding the ambulance service's compliance with the schedule of rates and charges approved by the director.

3. Is completed and forwarded to the department in a timely manner.

D-4.

DEPARTMENT OF AGRICULTURE
Title 3, Chapter 3

Amend: R3-3-1101, R3-3-1102, R3-3-1103, R3-3-1104, R3-3-1105, R3-3-1106, R3-3-1107, R3-3-1108, R3-3-1110, Appendix A

Repeal R3-3-1109

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: November 12, 2024

SUBJECT: **DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 3

Amend: R3-3-1101, R3-3-1102, R3-3-1103, R3-3-1104, R3-3-1105, R3-3-1106, R3-3-1107, R3-3-1108, R3-3-1110, Appendix A

Repeal R3-3-1109

Summary:

This regular rulemaking from the Department of Agriculture (Department) seeks to amend nine (9) rules and one (1) appendix and repeal one (1) rule in Title 3, Chapter 3, Article 11 regarding Arizona Native Plants. Specifically, the Department indicates the proposed amendments will align with current practices, update outdated references, and provide additional provisions to coincide with current Arizona native plant issues. The Department indicates other changes are intended to make technical changes, update the current list of protected native plants, update outdated taxonomy where needed, and overall reduce the regulatory burden by making the rules clearer and more concise. The Department anticipates the rulemaking will result in an overall benefit to the protection of Arizona native plants, to the regulated community, and the public.

1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

The Department cites both general and specific statutory authority for these rules.

2. Do the rules establish a new fee or contain a fee increase?

The Department indicates this rulemaking does not establish a new fee. However, the Department indicates this rulemaking increases the fees for Arizona native plant law education found in rule R3-3-1106(D) to cover the cost of providing these services. Specifically, the fee for attending a seminar is increased from $10 to $14 and from $25 to $35 for a court ordered native plant law seminar. This fee increase is to assist in covering the administrative costs associated with providing seminar training.

A.R.S. § 41-1008(A)(3) states an agency shall not "[i]ncrease a fee in an amount that exceeds the percentage of change in the average consumer price index as published by the United States department of labor, bureau of labor statistics between that figure for the latest calendar year and the calendar year in which the last fee increase occurred." Rule R3-3-1109, where the fees were previously located, was last amended in 2008. The Department indicates the percentage of change in the average consumer price index from 2008 to 2023 is a 42.4% increase. Likewise, the increase of fee from $10 to $14 and from $25 to $35 represents a 40% increase, which is within the 42.4% increase. As such, the Department is in compliance with A.R.S. § 41-1008

3. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?

The Department indicates it did not review any study relevant to this rulemaking.

4. Summary of the agency's economic impact analysis:

The Department anticipates the rulemaking will result in an overall benefit to the protection of Arizona native plants, to the regulated community, and the public. The Department has determined the rulemaking will not require any new full-time employees. The rulemaking could result in additional costs for the regulated community, but those costs are primarily associated with those that commit a violation of the rules and an increase of the cost from $25 to $35 to acquire all "Notices of Intent to Clear" as they are filed. Additionally, the fee for native plant education is increased from $10 to $14 for a native plant law education seminar and $25 to $35 for a court ordered native plant law education seminar. Changes may prove to benefit Arizona native plant salvage operations by providing clearer information for land developers, property owners, and State land managers on when a protected native plant can be salvaged instead of being destroyed. There will also be an additional saving to the regulated community by eliminating the requirement of the use of the $0.15 seal for Arizona protected native plants, since the associated protected native plant tag is purchased, also serves the function of sealing the native plant cord.

5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department has determined there is no less intrusive or costly alternative method of achieving the purpose of the rulemaking. The Department will not incur any additional costs associated with the rulemaking since these programs currently exist and the intent is to only clarify and improve those processes. Therefore, the Department has determined that the benefits of the rulemaking outweigh any costs.

6. What are the economic impacts on stakeholders?

The persons directly affected by the rulemaking are land developers, native plant salvage companies, State land managers, and other political subdivisions with state and private land. The proposed rulemaking will impose an additional cost by increasing the cost for requested and mandatory naïve plant law education; and reduce a cost by eliminating the requirement for purchasing a native plant seal, based on current Department practices. According to the Department, the benefits of the rulemaking will outweigh the costs of those directly affected since the rulemaking will clarify the requirements for native plant salvage.

7. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?

The Department indicates, based on input provided during the comment period, two minor changes were made that clarified ambiguous language between the Notice of Proposed Rulemaking published in the Administrative Register on August 2, 2024 and the Notice of Final Expedited Rulemaking now before the Council for consideration:

- In R3-3-1102(B), the proposed language: "Notice is given to the Department within the following minimum time periods, starting from the time the notice was given or from when confirmation is received from the department:" has been amended to state "Notice is given to the Department within the following minimum time periods, starting from the time the notice was given to the Department:"

- In R3-3-1103(B)(6), the proposed language: "In situations where 1 through 5 above are not possible, the destruction or clearing of the land may begin 60 days after the notice, as prescribed in subsection (A), has been acknowledged by the Department." has been amended to state "In situations where 1 through 5 above are not possible, the destruction or clearing of the land may begin 60 days after the notice, as prescribed in subsection (A), has been provided to the Department."

Additionally, based on feedback provided by the Council staff, in order to comply with A.R.S. § 41-1008(A)(3) the fee increases in rule R3-3-1102(C) and R3-3-1106(D)(1)&(2) (previously R3-3-1109(B)(1)&(2)), were reduced. No supplemental notice was filed since these changes did not substantively change the intent of the rules. In R3-3-1102(C): the proposed

language changes the payment to be included on a list to receive any Notice of Intent to Clear from $50 annually to $25 annually. In R3-3-1106(1) and (2) the proposed language amends the payment to attend an Arizona native plant seminar or training course from $50 to $14; and $65 to $25 for court mandated native plant law education

Council staff does not believe these changes make the rules substantially different pursuant to A.R.S. § 41-1025.

8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

The Department indicates one set of comments were received during the public comment period from the City of Phoenix, Office of Environmental Programs. Specifically, the Department indicates input was provided that there was some ambiguous language regarding when the timeframe begins when filing a notice of intent with the department in R3-3-1102(B) and R3-3-1103(B)(6). Stating that it would make it difficult for a project proponent to know when their project could proceed, alternative language was provided for consideration. The Department reviewed the comments provided by the City of Phoenix, Office of Environmental Programs and concurred with their assessment. The alternative language provided was used to clarify the ambiguous language. Council staff believes the Department has adequately responded to public comments related to this rulemaking.

9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates a general permit is used for the issuance of tags for harvest restricted native plants since it requires basic information. However, the Department states the permits, tags, and seals issued under A.R.S. §§ 3-906, 3-907, and Title 3, Chapter 3, Article 11 do not qualify as a general permit under A.R.S. § 41-1037 since qualifying information and documentation, and qualifying conditions, must be satisfied prior to the issuance of the required permits, tags and seals to salvage a highly safeguarded, salvage restricted, and salvage assessed native plant. In this way, the issuance of a general permit is not technically feasible or would not

meet the applicable statutory requirements. *See* A.R.S. § 41-1037(A)(3). Council staff believes the Department is in compliance with A.R.S. § 41-1037.

10. <u>Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?</u>

The Department indicates federal law 16 U.S.C. § 1531 et seq., (i.e. the Endangered Species Act of 1973) applies to the subject of highly safeguarded plants in this Article. The Department indicates these rules are not more stringent than federal law.

11. <u>Conclusion</u>

This regular rulemaking from the Department seeks to amend nine (9) rules and one (1) appendix in Title 3, Chapter 3, Articles 11 regarding Arizona Native Plants. Specifically, the Department indicates the proposed amendments will align with current practices, update outdated references, and provide additional provisions to coincide with current Arizona native plant issues. The Department indicates other changes are intended to make technical changes, update the current list of protected native plants, update outdated taxonomy where needed, and overall reduce the regulatory burden by making the rules clearer and more concise. The Department indicates this rulemaking does not establish a new fee. However, the Department indicates this rulemaking increases the fees for Arizona native plant law education found in rule R3-3-1106(D) to cover the cost of providing these services. Specifically, the fee for attending a seminar is increased from $10 to $14 and from $25 to $35 for a court ordered native plant law seminar. This fee increase is to assist in covering the administrative costs associated with providing seminar training. The Department anticipates the rulemaking will result in an overall benefit to the protection of Arizona native plants, to the regulated community, and the public.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

KATIE HOBBS
Governor

PAUL E. BRIERLEY
Director

Arizona Department of Agriculture

postal: 1802 W. Jackson Street, #78 Phoenix, Arizona 85007 ~ physical: 1110 W. Washington Street, Phoenix, AZ 85007
P: (602) 542-0994 F: (602) 542-1004

October 18, 2024

grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: Department of Agriculture, Title 3, Chapter 3, Article 11, Request for Placement on Agenda

Dear Ms. Klein:

The Arizona Department of Agriculture is requesting to place a final rulemaking on the Governor's Regulatory Review Council agenda for consideration and approval. Enclosed with this letter you will find the Arizona Department of Agriculture's (Department) final rulemaking packet for A.A.C. Title 3, Chapter 3, Article 11.

The close of record for the proposed rulemaking occurred on September 6, 2024 following a public hearing for oral comments. During the comment period, the Department received one comment from the City of Phoenix, Office of Environmental Programs regarding clarifying ambiguous language in rules R3-3-1102(B) and R3-3-1103(B)(6) where it was not clear what the timeframe begins when filing a notice of intent to clear land with the Department. This change was made and determined not to be a substantive change. This rulemaking activity is partially related to a five-year review report that was approved on November 7, 2023. The rulemaking does not establish any new fees. However, the fees prescribed for Arizona native plant law education were increased in R3-3-1106(D) to cover the costs of providing these services. The rulemaking does not contain any other fee increases in any other Sections of the rulemaking. The Department is not requesting an immediate effective date pursuant to A.R.S. § 41-1032. There were no studies conducted related to the rulemaking. No additional employees are necessary to implement and enforce the changes to the rules. The Department received final approval the agency's policy advisor to proceed with final rulemaking on October 17, 2024.

Enclosed with this letter is:

1. A copy of the Notice of Final Rulemaking
2. A copy of the Economic, Small Business, and Consumer Impact Statement
3. A copy of the written comment received and the response provided.
4. A copy of the Authorizing statutes

5. A copy of the initial and final requests and authorizations from the Governor's Office for approval to conduct rulemaking and proceed with final rulemaking pursuant to A.R.S. § 41-1039.

Please contact Brian McGrew at (602) 542-3228 or bmcgrew@azda.gov with any questions about this rulemaking.

Sincerely,

Paul E. Brierley
Director

cc: Sheldon Jones, Deputy Director
Jack Peterson, Associate Director

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

PREAMBLE

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

October 17, 2024

2.

Article, Part, or Section Affected (as applicable)	Rulemaking Action
R3-3-1101	Amend
R3-3-1102	Amend
R3-3-1103	Amend
R3-3-1104	Amend
R3-3-1105	Amend
R3-3-1106	Amend
R3-3-1107	Amend
R3-3-1108	Amend
R3-3-1109	Repeal
R3-3-1110	Amend
Appendix A	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. § 3-107(A)

Implementing statute: A.R.S. §§ 3-903, 3-905 and 3-912

4. The effective date of the rule:

This rule shall become effective 60 days 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 (to be filled in by *Register* editor).

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):

n/a

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):

n/a

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: 29 A.A.R. 2167. September 15, 2023, Iss. 37,

Notice of Formal Rulemaking Advisory Committee: 29 A.A.R. 3589, November 17, 2023, Iss. 46

Notice of Public Information: 29 A.A.R. 3908, December 15, 2023, Iss. 50

Notice of Proposed Rulemaking: 30 A.A.R. 2468, Issue Date: August 2, 2024, Issue Number: 31, File number: #R24-138

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

Name: Brian McGrew

Title: Program Manager

Physical Address: Arizona Department of Agriculture
1110 W. Washington St., Suite 450
Phoenix, Arizona 85007
Mailing Address: Arizona Department of Agriculture
1802 W. Jackson St., #78
Phoenix, Arizona 85007
Telephone: (602) 542-3228
Fax: (602) 542-1004
Email: bmcgrew@azda.gov
Website: https://agriculture.az.gov/

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

On August 23, 2023 the Department received approval from the Governor's Office Land Use Policy Advisor pursuant to A.R.S. § 41-1039(A)(2) to revise the rules under Title 3, Chapter 3, Article 11, to reduce and ameliorate a regulatory burden, while achieving the same regulatory objective as indicated in the Environmental Services Division's five-year rule review for Title 3, Chapter 3, Article 11. Pursuant to A.R.S. § 3-106 The Chief Executive Officer of the Department established a seven-member formal rulemaking advisory committee of stakeholders, conservationists, and State agencies on November 1, 2023 to provide expert opinion and advice on the proposed changes to the Arizona native plant rules. The Committee met monthly to discuss proposed changes and made formal recommendations to the Chief Executive Officer of the Department on May 16, 2024. The Department also received support from other industry stakeholders, Arizona Nursery Association and the Arizona Farm Bureau. The explanation of changes are as follows:

R3-3-1101: The Department proposes to amend this rule by eliminating the unnecessary definitions for "Agent", "Department", "Landowner", "Noncommercial salvage permit", "Permittee", "Scientific permit" and "Wood receipt"; by adding new useful definitions for "Authorized representative", "Collection", "Highly safeguarded native plant", "Salvage", "Salvage assessed native plant", "Salvage restricted native plant".

An explanation of the jurisdiction of the Arizona native plant statutes and rules is also included here for clarification; and by clarifying the definitions of "Conservation" and "Destroy".

R3-3-1102: The Department proposes to amend the rule to include email address as part of the applicant information; clarifying when the time period begins to proceed with disposal of a native plant; clarify what is needed to obtain a copy of filed Notices of Intent to clear. Includes a change of the fee to be on the notification list from $25 to $35 to cover administrative costs, and clarifies when a notification of intent is not required.

R3-3-1103: The Department proposes several changes to this rule. The Department plans to incorporate language in subsection (A) from A.R.S. § 3-905(A) that refers to more than ¼ acre of land and a 60 day notice rather than just referring to the statute. The Department also plans to clarify the requirements for a state agency to allow the salvage protected native plants through the use of permits, tags and seals and the requirement that a person hold a scientific or non-commercial salvage permit for highly safeguarded native plants. The changes clarify the fee exemption for a state agency and the conditions for notification under an emergency where imminent threat to safety or property damage exists.

R3-3-1104: The Department proposes to amend this rule to prescribe the conditions that apply for each native plant permit. What information is required, when one is required, and conditions when one is not required. The Department proposes to move subsections (C) through (E) into rule R3-3-1106, as they relate to fees. The Department will only maintain the requirement to provide a social security number to the extent otherwise required by law. The rule will specifically state when an individual is obtaining the permit their social security number is required. The conditions for exemption from the rules are included for clarity.

R3-3-1105: The Department proposes to combine and rephrase subsections (A)(l) and (B)(l). The Department proposes to move subsections (A)(2), (A)(4), (B)(2) and (B)(4) into rule R3-3-1104, focusing on permit application requirements and permit terms. The Department also proposes to add language to subsections (A)(3) and (B)(3) from A.R.S.§ 3-906(C) related to permit requirements for highly safeguarded native plants. Finally, the Department proposes to add a subsection to make clear that plants covered by a scientific or noncommercial salvage permit cannot be sold. The Department proposes to use this rule to detail the permit application requirements. The Department also plans to incorporate the requirement in A.R.S. § 3- 909(A) of a certificate of inspection for moving protected native plants out-of-state into this rule. The Department will only maintain the requirement to provide a social security number to the extent otherwise required by law. The rule will specifically state when an individual is obtaining the permit their social security number is required.

R3-3-1106: The Department proposes to rename and utilize the rule to prescribe fees for the permits, tags, and seals issued under the Article, including the fees for native plant law education incorporated from rule R3-3-1109. The fee attending a seminar is increased from $10 to $14 and from $25 to $35 for a court ordered native plant law seminar. This fee increase is to assist in covering the administrative costs associated to providing seminar training. No permit, tag, or seal fee increases.

R3-3-1107: The Department proposes to remove subsections (A) through (C) and incorporate the language into rule R3-3-1104 as it relates to native plant permits. Then utilize the rule to prescribe tag, seal and cord usage. The requirement for the usage of seals for Arizona protected native plants removed and only required for imported protected native plants. The current native plant tags used also serve the purpose of sealing the cord.

R3-3-1108: The Department proposes to change the reference to salvage restricted to salvage assessed. The Department also proposes to add to the recordkeeping requirements that the permittee must note the location where the plant was taken from and where it was replanted.

R3-3-1109: The Department proposes to repeal the rule and move the native plant law education fee requirements to rule R3-3-1106.

R3-3-1110: The Department proposes to make this rule more useful by include criteria for determining conditions that a permit could be denied and the process for an appeal.

Appendix A: The Department proposes to amend Appendix A, by input received from the scientific community and subject matter experts to ensure that the rule contains correct taxonomy and plants are properly categorized based on current native plant status.

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:

No study was conducted

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:

The rulemaking does not diminish any previous authority of a political subdivision of this state.

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

The Department's intent in proposing the amendments to Articles 11, listed in Section 5 of this notice, is to reduce or ameliorate regulatory burdens on the public, while achieving the same regulatory objective as indicated in the Environmental Services Division's five-year rule review. Proposed amendments throughout the Chapter will align with current practices, update outdated references, and provide additional provisions to coincide with current Arizona native plant issues. Other changes are intended to make technical changes, update the current list of protected native plants, update out dated taxonomy where needed, and overall reduce the regulatory burden by making the rules clearer and more concise. The Department anticipates the rulemaking will result in an overall benefit to the protection of Arizona native plants, to the regulated community, and the public. The Department has determined the rulemaking will not require any new full-time employees. The rulemaking could result in additional costs for the regulated community, but those costs are primarily associated to those that commit a violation of the rules of this Chapter and an increase of the cost from $25 to $35

to acquire all "Notices of Intent to Clear" as they are filed. Additionally, the fee for native plant education is increased from $10 to $14 for a native plant law education seminar and $25 to $35 for a court ordered native plant law education seminar. These increases are based on the increase in administrative costs since 2008 and do not exceed the percentage of change in the average consumer price index as published by the U.S. Department of Labor, Bureau of Labor Statistics, pursuant to A.R.S. § 41-1008(A)(3). Changes may prove to benefit Arizona native plant salvage operations by providing a clearer information for land developers, property owners, and State land managers on when a protected native plant can be salvaged instead of being destroyed. There will also be an additional saving to the regulated community by eliminating the requirement of the use of the $0.15 seal for Arizona protected native plants, since the associated protected native plant tag that is purchased, also serves the function of sealing the native plant cord. The Department has determined there is no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Department will not incur any additional costs associated with the rulemaking since these programs currently exist and the intent is to only clarify and improve those processes. Therefore, the Department has determined that the benefits of the rulemaking outweigh any costs.

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

Based on input provided during the open comment period, two minor changes were made that clarified ambiguous language and will benefit the regulated community. No supplemental notice was filed since these changes did not substantively change the intent of the rule.

1) In R3-3-1102(B), the proposed language: "Notice is given to the Department within the following minimum time periods, starting from the time the notice was given or from when confirmation is received from the department:" has been amended to state "Notice is given to the Department within the following minimum time periods, starting from the time the notice was given to the Department:"

2) In R3-3-1103(B)(6), the proposed language: "In situations where 1 through 5 above are not possible, the destruction or clearing of the land may begin 60 days after the notice, as prescribed in subsection (A), has been acknowledged by the Department." has been amended to state "In situations where 1 through 5 above are not possible, the destruction or clearing of the land may begin 60 days after the notice, as prescribed in subsection (A), has been provided to the Department."

Based on feedback provided by the Governor's Regulatory Review Council, in order to comply with A.R.S. § 41-1008(A)(3) the fee increases in rule R3-3-1102(C) and R3-3-1106(D)(1)&(2) (previously R3-3-1109(B)(1)&(2)), were reduced. No supplemental notice was filed since these changes did not substantively change the intent of the rules.
In R3-3-1102(C): the proposed language chnages the payment to be included on a list to receive any Notice of Intent to Clear from $50 annually to $25 annually.
In R3-3-1106(1) and (2) the proposed language amends the payment to attend an Arizona native plant seminar or training course from $50 to $14; and $65 to $25 for court mandated native plant law education.

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

One set comments were received during the public comment period from the City of Phoenix, Office of Environmental Programs. Input was provided that there was some ambiguous language regarding when the timeframe begins when filing a notice of intent with the department in R3-3-1102(B) and R3-3-1103(B)(6). Stating that it would make it difficult for a project proponent to know when their project could proceed. Alternative language was provided for consideration. The Department reviewed the comments provided by the City of Phoenix, Office of Environmental Programs and concurred with their assessment. The alternative language provided, as noted in subsection 11 of the preamble, was used to clarify the ambiguous language.

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.R.S. § 3-104(F) requires the Arizona Department of Agriculture Advisory Council assist the Director of the Department on all rulemaking activities. The council shall review, advise and make recommendations before they are adopted. During the June 28, 2024

Advisory Council Meeting, council members approved the Department's recommendations to amend the rules in Title 3, Chapter 3, Article 11.

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:

A general permit is used for the issuance of tags for harvest restricted native plants since it requires basic information. The permits, tags, and seals issued under A.R.S. §§ 3-906, 3-907, and Article 11 of 3 A.A.C. 3 do not qualify as a general permit under A.R.S. § 41-1037 since qualifying information and documentation, and qualifying conditions, must be satisfied prior to the issuance of the required permits, tags and seals to salvage a highly safeguarded, salvage restricted, and salvage assessed native plant.

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:

Federal law 16 U.S.C. § 1531 et seq., (i.e. the Endangered Species Act of 1973) applies to the subject of highly safeguarded plants in the Article. These rules are not more stringent to federal law.

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:

No analysis was conducted

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

The Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq. in appendix A, under the category of highly safeguarded native plant.

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:

n/a

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

ARTICLE 11. ARIZONA NATIVE PLANTS

Section

R3-3-1101. Definitions

R3-3-1102. Protected Native Plant Destruction by a Private Landowner

R3-3-1103. Disposal and Salvage of Protected Native Plants by a State Agency

R3-3-1104. Protected Native Plant ~~Permits; Tags; Seals; Fees~~ Permits

R3-3-1105. Scientific Permits; Noncommercial Salvage Permits

R3-3-1106. ~~Protected Native Plant Survey; Fee~~ Protected Native Plant Program Fees

R3-3-1107. ~~Movement Permits;~~ Tags, Seals, and Cord Use

R3-3-1108. Recordkeeping; Salvage Assessed and Harvest Restricted Native Plants

R3-3-1109. ~~Arizona Native Plant Law Education~~ Repealed

R3-3-1110. Permit Denial

Appendix A. Protected Native Plants by Category

ARTICLE 11. ARIZONA NATIVE PLANTS

R3-3-1101. Definitions

In addition to the definitions in A.R.S. § 3-901, the following terms apply to this Article:

~~"Agent" means a person authorized to manage, represent, and act for a landowner.~~

"Authorized representative" means a project manager, project engineer, sub-contractor, or similar that is identified by the landowner on a Notice of Intent to Clear form, or amended form, as a person that has authorization from the landowner to salvage protected native plants on property owned or managed by the landowner.

"Certificate of inspection for interstate shipments" means a certificate to transport protected native plants out of the state.

"Collection" means a collection of one or more highly safeguarded native plants that are preserved, catalogued, and managed for the purpose of preserving that species of an Arizona native plant.

"Conservation" means prevention of exploitation, damage, destruction, or neglect of native plants while helping to ensure continued public use.

"Cord" means a specific type string or small rope issued by the Department for attaching tags and seals to protected native plants.

"Cord of wood" means a measurement of firewood equal to 128 cubic feet.

~~"Department" means the Arizona Department of Agriculture.~~

"Destroy" means to cause the death or irreparable damage of any protected native plant.

"Harvest restricted native plant permit" means a permit required to remove the by-products, fibers, or wood from a native plant listed in Appendix A, subsection (D).

"Highly safeguarded native plant" (A.R.S. § 3-903(B)(1)) means a group of plants that are threatened for survival or are in danger of extinction. Including the native plants listed in Appendix A, subsection (A) and those listed in the Endangered Species Act. The plants in this category may only be salvaged with the use of scientific or non-commercial salvage permits, tags and seals.

~~"Landowner" means a person who holds title to a parcel of land.~~

~~"Noncommercial salvage permit" means a permit required for the noncommercial salvage of a highly safeguarded native plant.~~

"Jurisdiction" means the applicability of the Arizona native plant laws of A.R.S. §§ 3-901 through 3-934 that apply within the boundaries of the state, except on designated Indian lands and federal lands. Federal land managers are to be cognizant of E.O. 13132 (64 FR 43255, August 10, 1999) when considering native plants on federal land. State law governs in areas within local political subdivision boundaries but does not prohibit more stringent native plant regulations or ordinances adopted by the political subdivision. Where the two are in conflict, state laws and rules supersede, or if complimentary, the most stringent of the two laws and rules shall apply.

"Original growing site" means a place where a plant is growing wild and is rooted to the ground or any property owned by the same landowner where a protected native plant is relocated or transplanted without an original transportation permit.

~~"Permittee" means any person who is issued a permit by the Department for removing and transporting protected native plants.~~

"Protected native plant" means any living plant or plant part listed in Appendix A and growing wild in Arizona.

"Protected native plant tag" means a tag issued by the Department to identify the lawful removal of a protected native plant, other than a saguaro cactus, from its original growing site.

"Saguaro tag" means a tag issued by the Department to identify a saguaro cactus being lawfully moved.

"Salvage" means to remove a protected native plant that would otherwise be destroyed in the land development process or other actions that would threaten the survival of the species of plant.

"Salvage assessed native plant" means plants categorized in Appendix A, subsection (C) of this Article, as described by A.R.S. § 3-903(B)(3), that are to be afforded the exclusive protections, involving the use of salvage tags and annual salvage permits, provided in this Article. The category contains native plants that are not subject to theft or vandalism, but nevertheless have salvage value.

"Salvage assessed native plant permit" means a permit required to remove a native plant listed in Appendix A, subsection (C).

"Salvage restricted native plant" means plants categorized in Appendix A, subsection (B) of this Article, as described by A.R.S. § 3-903(B)(2), that are to be afforded the exclusive protections involving the use of salvage permits, tags, and seals provided in this Article.

This category includes native plants that may be salvaged and transplanted but are nevertheless subject to high potential for damage by theft or vandalism.

"Salvage restricted native plant permit" means a permit required to remove a native plant listed in Appendix A, subsection (B).

~~"Scientific permit" means a permit required to remove a native plant for a controlled experimental project by a qualified person.~~

"Securely tie" means to fasten in a tight and secure manner to prevent the removal of tags, seals, or cord for reuse.

"Small Native Plant" means any protected plant eight inches in height or less.

"State agency" has the same meaning as in A.R.S. § 3-901(3) it contains *"any agency or political subdivision of the state."*.

~~"Survey" means the process by which a parcel of land is examined for the presence of protected native plants. A simple survey determines only whether protected native plants are present. A complete survey establishes the kind and number of each species present.~~

~~"Wood receipt" means a receipt issued by the Department to identify the lawful removal of a protected native plant harvested for fuel, being removed from its original growing site.~~

R3-3-1102. Protected Native Plant Destruction by a Private Landowner

A. Notice of intent.

1. Before a protected native plant is destroyed, the private landowner shall provide notification of intended destruction, which shall include the following information to the Department on a form obtained from the Department:
   a. Name, address, email address, and telephone number of the landowner;
   b. Name, address, email address, and telephone number of the landowner's agent, if applicable;
   c. Valid documentation indicating land ownership, including but not limited to a parcel identification number, tax assessment, or deed;
   d. Legal description, map, address, or other description of the area, including the number of acres to be cleared, in which the protected native plants subject to the destruction are located;
   e. Earliest date of plant destruction; and
   f. Landowner's intent for the disposal or salvage of protected native plants on the land.
2. A landowner intending to destroy protected native plants on an area of less than one acre may submit the information required in subsection (A)(1) to the Department verbally.

B. A landowner shall not destroy a protected native plant until:

1. The landowner receives a written confirmation ~~notice~~ from the Department that the notice has been received, and
2. Notice is given to the Department within the following minimum time periods, starting from the time the notice was given to the Department:
   a. Twenty days before the plants are destroyed over an area of less than one acre.
   b. Thirty days before the plants are destroyed over an area of one acre or more but less than 40 acres.
   c. Sixty days before the plants are destroyed over an area of 40 acres or more.

C. The Department shall ~~provide a salvage operator or other interested person with a copy of a notice of intent submitted under this Section upon receipt of the private landowner's name, address, telephone number, and payment of an annual $25 nonrefundable fee~~ compile a list of names and contact information of salvagers or persons interested in native plant salvage. The persons on the list shall receive notifications of potential salvage opportunities. To be placed on the list, the salvager or other interested person shall submit to the Department's licensing section the salvager or interested person's name, email address, mailing address, telephone number, and payment of an annual $35 nonrefundable fee. The Department shall send to all listed salvagers and interested persons an electronic copy of notices of intent ("NOI"), including those that indicate they are not allowing salvage, The electronic copy of the NOIs shall be sent out daily the next business day after the NOIs are received.

D. A notice of intent is not required for the destruction of native plants on individually owned residential property of ten acres or less where initial building construction has already occurred.

R3-3-1103. Disposal and Salvage of Protected Native Plants by a State Agency

~~A. A state agency intending to remove or destroy protected native plants shall notify the Department, under A.R.S. § 3-905, and shall propose a method of disposal from the following list:~~

~~1. The plants may be sold at a public auction;~~

~~2. The plants may be relocated or transported to a different location on the same property or to another property owned by the state, without obtaining a permit;~~

~~3. The plants may be donated to nonprofit organizations as provided in A.R.S. § 3-916;~~

~~4. The plants may be donated to another state agency or political subdivision, without obtaining a permit; or~~

~~5. The plants may be salvaged or harvested by a member of the general public or a commercial dealer, if the person holds a permit as provided under A.R.S. § 3-906 or 3-907.~~

A. A state agency intending to remove or destroy protected native plants, over an area of state land exceeding one-quarter acre, the state agency shall notify the Department in writing at least sixty days before the plants are removed or destroyed with the following information on a form obtained from the Department:

1. Legal description, map, address, or other description of the area, including the number of acres to be cleared, in which the protected native plants subject to the destruction are located;
2. A description of the number and type of plants to be removed or destroyed;
2. Earliest date of plant destruction; and
3. The state agency's intent for the disposal or salvage of protected native plants on the land.

B. A state agency intending to remove or destroy protected native plants shall propose a method of disposal or transfer from the following list:

1. Relocated or transported to a different location on the same property or to another property owned by the state, without obtaining a permit;
2. Donated to another state agency or political subdivision, by obtaining a non-commercial salvage permit; or
3. Donated to nonprofit organizations as provided in A.R.S. § 3-916;
4. Salvaged or harvested by a member of the general public or a commercial dealer, if the person holds a salvage permit issued pursuant to R3-3-1104.
5. Sold at a public auction, with appropriate cord sealing tags purchased and utilized by the buyer pursuant to R3-3-1106(B) and R3-3-1107;
6. In situations where 1 through 5 above are not possible, the destruction or clearing of the land may begin 60 days after the notice, as prescribed in subsection (A), has been provided to the Department.

C. Any action by a state agency must occur within one year of the date disclosed in the notice.

D. A state agency filing a notice, as prescribed in subsection (A), to remove protected native plants are exempt from fees established for salvaged plants.

~~B.~~E. ~~If~~ Notwithstanding subsection (B)(1) through (5), if the plants are highly safeguarded native plants, they shall first be made available to the holder of a valid scientific permit or a noncommercial salvage permit, by obtaining a current list of scientific permit and noncommercial salvage permit holders from the Department.

F. Pre-notification of intent shall not be required in an emergency, where imminent threat to the safety of a person or animal, or damage to personal or state property exists if protected native plants are not removed or destroyed by the state agency, provided the notice of intent is filed in conjunction with the removal or destruction of the native plant.

R3-3-1104. Protected Native Plant ~~Permits; Tags; Seals; Fees~~ Permits

A. A person shall not collect, transport, possess, sell, offer for sale, dispose, or salvage protected native plants unless that person is 18 years of age or older and possesses an appropriate permit.

B. Salvage restricted native plant permits. ~~An applicant shall submit the following information to the Department on a form obtained from the Department, as applicable.~~

1. An applicant for a salvage restricted native plant permit shall submit the following information to the Department on a form obtained from the Department, as applicable, along with any applicable fees outlined in R3-3-1106:

~~1.~~a. Name, business name, address, email address, telephone number, ~~Social Security number or tax identification number,~~ and signature of the applicant;

~~2.~~b. Name and number of plants to be removed;

~~3.~~c. Purpose of the plant removal;

~~4.~~d. Whether the applicant has a conviction for a violation of a state or federal statute regarding the protection of native plants within the previous five years;

~~5. Except for salvage assessed native plants;~~

~~a.~~e. Name, address, email address, telephone number, and signature of the landowner where the plants will be removed;

~~b.~~f. Location of the permitted site and size of acreage;

~~c.~~g. Destination address where the plants will be transplanted or temporarily held before being sold, gifted, or otherwise distributed to a permanent location;

~~d.~~h. Legal and physical description of the location of the original growing site; and

e.i. Parcel identification number for the permitted site or other documents proving land ownership.

2. Salvage restricted native plant permits and plant tags are valid for the calendar year in which they are issued. The tags expire at the end of the calendar year unless the permit is renewed.

3. Exemptions. The following are exemptions for the requirements of this subsection.

a. Plants propagated or cultivated by human beings; or

b. Native plants collected or salvaged by a homeowners' association or any other community based organization if the plants are relocated in the community.

~~C. Permit fees.~~

~~1. A person removing and transporting protected native plants shall submit the following applicable fee to the Department with the permit application:~~

~~a. Salvage assessed native plant permit, annual use, $35;~~

~~b. Harvest restricted native plant permit, annual use, $35;~~

~~c. All other native plant permits, one-time use, $7;~~

~~d. Certificate of inspection for interstate shipments, $15.~~

~~2. Exemptions. Protected native plants are exempt from fees if:~~

~~a. The protected native plants intended for personal use by a landowner are taken from one piece of land owned by the landowner to another piece of land also owned by the landowner, remain on the property of the landowner, and are not sold or offered for sale;~~

~~b. The protected native plants are collected for scientific purposes; or~~

~~c. A landowner donates the protected native plant to a scientific, educational, or charitable institution.~~

~~D. Tag and harvesting fees.~~

~~1. Any person obtaining a saguaro tag or other protected native plant tag or receipt shall submit the following applicable fee to the Department at the time a tag is obtained:~~

~~a. Saguaro, $8 per plant;~~

~~b. Trees cut for firewood and listed in the harvest restricted category, $6 per cord of wood;~~

~~c. Small native plant, $.50 per plant;~~

~~d. Any other protected native plant referenced in A.R.S. § 3-903(B) and (C) and listed in Appendix A, $6 per plant.~~

~~2. The fee for harvesting *nolina* or *yucca* parts is $6 per ton. Payment shall be made to the Department in the following manner:~~

~~a. Unprocessed nolina or yucca fiber shall be weighed on a state-certified bonded scale; and~~

~~b. The harvester shall submit payment and weight certificates to the Department no later than the tenth day of the month following each harvest.~~

~~**E.** Seal fees. A person obtaining a seal shall submit a $.15 per plant fee to the Department at the time a seal is obtained.~~

~~**F.** Salvage assessed native plant permits and plant tags are valid for the calendar year in which they are issued. The tags expire at the end of the calendar year unless the permit is renewed.~~

C. Salvage assessed native plant permits

1. An applicant for a salvage assessed native plant permit shall submit the following information to the Department on a form obtained from the Department, as applicable, along with any applicable fees outlined in R3-3-1106:
   a. Name, business name, address, email address, telephone number, and signature of the applicant;
   b. Names of the salvage assessed plants to be collected.
2. Salvage assessed native plant permits and plant tags are valid for the calendar year in which they are issued. The tags expire at the end of the calendar year unless the permit is renewed.
3. Exemptions. The following are exemptions for the requirements of this subsection.
   a. Plants propagated or cultivated by human beings; or
   b. Native plants collected or salvaged by a homeowners' association or any other community based organization if the plants are relocated in the community.

D. Harvest restricted native plant permit and receipts.

1. Any person harvesting the wood, fiber, or by-product of a plant listed in subsection (D) of Appendix A of more than one-hundred pounds, or more than two cords of wood, shall apply for a harvest restricted permit and receipts by submitting the following information to the Department, on a form obtained from the Department, along with any applicable fees outlined in R3-3-1106(C)(2):
   a. Name, address, email address and telephone number of the applicant applying for the permit;
   b. The legal land description where the harvesting will take place;
   c. For wood products, the number of cords to be collected;
   d. For Nolina or Yucca fiber, the numbers of pounds to be collected;
   e. Name, address, email address, telephone number, and signature of land owner(s)
2. Permits and unused receipts issued under this subsection are non-transferable and must be in the possession of the permit holder during harvesting and transport.
3. Receipts for harvest restricted materials that are sold must be transferred to a purchaser as proof of ownership.
4. Exemptions. The following are exemptions for the requirements of this subsection.
   a. Material harvested from lands managed by the federal government provided a person is in possession of a valid permit issued by the federal land management agency.
   b. Material harvested with written permission from a private land owner or tenant, from other than state-owned land or other public land, and:
      i. Is one-hundred pounds or less for Yucca or Nolina fiber; or
      ii. Is two cords or less of wood.
   c. The use of dead wood for campfires or cooking.
   d. Dead harvest restricted plants, collected by a land owner or tenant.

E. Scientific Permit. In addition to the requirements of A.A.C. R3-3-1105(A), the following application requirements apply:

1. An applicant shall submit the following information to the Department on a form obtained from the Department, along with any applicable fees outlined in R3-3-1106:
   a. Name, address, email address and telephone number of the company or research facility applying for the permit;
   b. Name, title and experience of the person conducting the research project;
   c. Purpose and intent of the research project;
   d. Controls to be used;
   e. Variables to be considered;
   f. Time-frame for the project;
   g. Anticipated results and plans for publication;
   h. Reports and recordkeeping that will be used to monitor the project;
   i. Project funding source;
   j. Funding of the company or research facility;
   k. Written authorization from the landowner for collection of the plants;
   l. Date of the application; and
   m. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests.
2. A scientific permit is valid for the calendar year in which it is issued.
3. A scientific permit holder may amend their permit anytime by submitting the updated information to the Department.
4. An applicant may also submit proof of a current scientific permit issued by a federal agency or state political subdivision and any additional information to the requirements of R3-3-1104(E)(1) not provided in the existing scientific permit.

F. Non-commercial Salvage Permit. In addition to the requirements of A.A.C. R3-3-1105(B), the following application requirements apply:

1. An applicant shall submit the following information to the Department, on a form obtained from the Department, along with any applicable fees outlined in R3-3-1106:
   a. Name, address, email address and telephone number of the applicant applying for the permit;
   b. Proposed relocation site for the plants;
   c. Written authorization from the landowner for collection of the plants;
   d. The number, species, and description of the plants being salvaged;
   e. Date of the application; and
   f. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests.
2. A non-commercial salvage permit is valid only for the transportation and the transplantation of the identified native plants indicated on the permit application. A non-commercial salvage permit holder may amend their permit anytime by submitting the updated information to the Department with written authorization from the landowner.
3. A non-commercial salvage permit is valid for the calendar year in which they are issued. The tags expire at the end of the calendar year unless the permit is renewed.
4. Plants propagated or cultivated by human beings are exempt from these requirements.

G. Movement Permit. In addition to the saguaro tag obtained pursuant to R3-3-1106(C)(1)(a), any person moving or salvaging a saguaro cactus over four feet tall from a location other than its original growing location in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the saguaro cactus is being moved shall provide the following information on the permit application, unless the applicant maintains a record of the original permit or verifies the Department has a record of a previous legal movement of the cactus by the applicant. Saguaro cactus that are propagated or cultivated by humans are exempt from this requirement.

1. The name, mailing address, email address, telephone number, and signature of the landowner;

2. The address or parcel identification number where the saguaro cactus is located;

3. The name, mailing address, email address, and telephone number of the receiver;

4. The name, mailing address, and telephone number of the carrier;

5. The number, species, and description of the plant being removed;

6. The parcel identification number of the property where the saguaro cactus is being moved; and

7. The date of the application.

H. Movement of protected native plants obtained outside Arizona.

1. Any person moving a protected native plant obtained outside Arizona and transporting and planting it within the state shall declare the protected native plant at the nearest Department office location during normal business hours, office locations can be found by calling 602-542-3578 or by visiting the Department's website at https://agriculture.az.gov/plantsproduce/native-plants.

2. To ensure compliance with A.A.C. R3-4-239, shipments originating from an area under quarantine for imported fire ants, the Department shall place the protected native plant under quarantine and direct the shipment to a certified quarantine holding area for inspection.

3. After the plants have been declared, permit and seal fees have been paid, the permitting office shall issue a Movement Permit and appropriate number of seals.

R3-3-1105. Scientific Permits; Noncommercial Salvage Permits

A. Scientific Permit

1. A person shall not collect, destroy, harm, or remove any highly safeguarded or other protected native plants for a research project unless that person holds a scientific permit issued pursuant to R3-3-1104(E).

   a. The removal and movement of the native plants shall be accomplished by a person experienced in native plant removal and transplantation

      i. Whenever possible, the permittee shall take specimens in such a way as to not reduce the population by retrieving minimal tissue, leaving the roots intact for perennial plants or utilizing other scientifically acceptable methods for the protection of the environment and remaining native plants.

      ii. If not already required by another agency or institution, and whenever possible, if the permittee takes multiple specimens, the permittee shall deposit at least one specimen at an Arizona university plant conservatory. If it is not possible to deposit a specimen at an Arizona university plant conservatory, the permittee shall provide the justification to the Department for noncompliance with this provision.

~~2. An applicant shall submit the following information to the Department on a form obtained from the Department:~~

~~a. Name, address, and telephone number of the company or research facility applying for the permit;~~

~~b. Name, title and experience of the person conducting the research project;~~

~~c. Purpose and intent of the research project;~~

~~d. Controls to be used;~~

~~e. Variables to be considered;~~

~~f. Time-frame for the project;~~

~~g. Anticipated results and plans for publication;~~

~~h. Reports and recordkeeping that will be used to monitor the project;~~

~~i. Project funding source;~~

~~j. Funding of the company or research facility;~~

~~k. Written authorization from the landowner for collection of the plants;~~

~~l. Date of the application;~~

~~m. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests; and~~

~~n. Tax identification number, or if applicant is an individual, a Social Security number.~~

~~3.~~2. A scientific permit shall be issued if the applicant provides documentation that demonstrates the following:

a. A plan, pre-approved by the landowner, to restore the removal site to a natural appearance;

b. The removal and movement of the native plants shall be accomplished by a person experienced in native plant removal and transplantation;

c. The native plants used in the project shall remain accessible to the Department;

d. The ecology of the project site is beneficial to the growth of the specific plants in the project ~~if practical~~;

e. Arrangements exist for a suitable permanent planting site for the surviving plants after the project's completion; and

f. Description of plant disposition and research hypothesis.

~~4. A scientific permit is valid for the calendar year in which it is issued.~~

3. In addition to the requirements listed in subsection (A)(2), the following requirements apply to highly safeguarded native plants:

a. Permits may be issued only for collection for scientific purposes of highly safeguarded native plants whose existence or location is threatened by intended destruction or a change in land usage, and

b. If the permit may enhance the survival of the affected species.

B. Noncommercial salvage permit:

1. Highly safeguarded native plants may only be collected for conservation by a person holding a noncommercial salvage permit issued pursuant to R3-3-1104(F).

~~2. An applicant shall submit the following information to the Department, on a form obtained from the Department:~~

~~a. Name, address, and telephone number of the applicant applying for the permit;~~

~~b. Proposed relocation site for the plants;~~

~~c. Written authorization from the landowner for collection of the plants;~~

~~d. Date of the application; and~~

~~e. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests.~~

~~3.~~2. A noncommercial salvage permit shall be issued if all of the following conditions are met through documentation provided to the Department:

a. The native plants used in the project shall be accessible to the Department after transplant, and

b. The relocation site is beneficial to the growth of the specific plants in the project.

~~4. A noncommercial salvage permit is valid only for the transportation and the transplantation of the particular native plant.~~

3. In addition to the requirements listed in subsection (B)(2), the following requirements apply to highly safeguarded native plants:

a. Permits may be issued only for collection for noncommercial salvage purposes of highly safeguarded native plants whose existence or location is threatened by intended destruction or a change in land usage, and

b. If the permit may enhance the survival of the affected species.

R3-3-1106. ~~Protected Native Plant Survey; Fee~~ Protected Native Plant Program Fees

~~**A.** Upon request, the Department may conduct a native plant survey. Upon completion, the Department shall notify the individual who made the request of:~~

~~1. The date the survey was performed;~~

~~2. The amount of the survey fee payable to the Department;~~

~~3. The name of Department personnel performing the survey;~~

~~4. Upon payment, the survey results including the names and numbers of protected native plants.~~

~~**B.** A person who requests a native plant survey shall pay the survey fee to the Department within 30 days from the date of the notification. The survey fee shall be based on time and travel expenses, except that no fee shall be charged for a determination of whether protected species exist on the land.~~

A. Permit fees.

1. In addition to any applicable fees for interstate shipment requiring a single shipment nursery stock inspection certification issued pursuant to R3-4-301(D), a person removing and transporting protected native plants shall submit the following applicable fee to the Department with the permit application:

   a. Salvage assessed native plant permit, annual use, $35;

   b. Harvest restricted native plant permit, annual use, $35;

   d. Certificate of inspection for interstate shipments, $15;

   c. All other native plant permits, one-time use, $7.

2. Exemptions. Protected native plants are exempt from fees if:

   a. The protected native plants intended for personal use by a landowner are taken from one piece of land owned by the landowner to another piece of land also owned by the landowner, remain on the property of the landowner, and are not sold or offered for sale;

   b. The protected native plants are collected for scientific purposes;

   c. A landowner donates the protected native plant to a scientific, educational, or charitable institution.

   d. Exempted pursuant to A.R.S. § 3-915;

   e. Donated to a home-owners association or nonprofit organizations as provided in A.R.S. § 3-916; or

   f. Donated to a state agency or political subdivision, under a non-commercial salvage permit.

B. Tag and harvesting fees.

1. Any person obtaining a saguaro tag or other protected native plant tag or receipt shall submit the following applicable fee to the Department at the time a tag is obtained:

   a. Saguaro, $8 per plant;

   b. Trees cut for wood and listed in the harvest restricted category, $6 per cord of wood;

   c. Small native plant, $.50 per plant;

   d. Any other protected native plant referenced in A.R.S. § 3-903(B) and (C) and listed in Appendix A, $6 per plant.

2. The fee for harvesting *nolina* or *yucca* parts is $6 per ton. Payment shall be made to the Department in the following manner:

   a. Unprocessed *nolina* or *yucca* fiber shall be weighed on a state-certified bonded scale; and

   b. The harvester shall submit payment and weight certificates to the Department no later than the tenth day of the month following each harvest.

C. Seal fees. A person obtaining a seal shall submit a $.15 per plant fee to the Department at the time a seal is obtained.

D. Arizona native plant law Education. In addition to the following fees, charges for printed materials or pamphlets shall be assessed based upon printing and mailing costs:

1. A person attending a seminar or training course on Arizona native plant law shall pay a nonrefundable fee of $14 to the Department before attending the class.

2. A person convicted of violating Arizona native plant laws and ordered by a court to attend a native plant educational class shall pay a nonrefundable fee of $35 to the Department before attending the class. The Department shall provide written confirmation of satisfactory completion to a person ordered by a court to attend a class.

R3-3-1107. ~~Movement Permits;~~ Tags, Seals, and Cord Use

~~A. Any person moving a protected native plant, except a saguaro cactus, previously transplanted from its original growing site in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the plant is being moved shall provide the following information on the permit application:~~

~~1. The name, telephone number, and signature of the landowner;~~

~~2. The location of the plant;~~

~~3. The name, address, and telephone number of the receiver;~~

~~4. The name, address, and telephone number of the carrier;~~

~~5. The number, species, and description of the plant being removed;~~

~~6. The tax parcel identification number; and~~

~~7. The date of the application.~~

~~**B.** Any person moving a saguaro cactus over four feet tall previously transplanted from its original growing site in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the saguaro cactus is being moved shall provide the following information on the permit application, unless the applicant maintains a record of the original permit or verifies the Department has a record of a previous legal movement of the cactus by the applicant.~~

~~1. The name, telephone number, and signature of the landowner;~~

~~2. The address where the saguaro cactus is located;~~

~~3. The name, address, and telephone number of the receiver;~~

~~4. The name, address, and telephone number of the carrier;~~

~~5. The number, species, and description of the plant being removed;~~

~~6. The tax parcel identification number of the property where the saguaro cactus is being moved; and~~

~~7. The date of the application.~~

~~**C.** Movement of protected native plants obtained outside Arizona.~~

~~1. Any person moving a protected native plant obtained outside Arizona and transporting and planting it within the state shall declare the protected native plant at the agricultural inspection station nearest the port of entry. The Department shall place the protected native plant under "Warning Hold" to the nearest permitting office.~~

~~2. If an agricultural station is not in operation at the port of entry, the person shall declare the protected native plant at the nearest permitting office during normal office hours.~~

~~3. After the plants have been declared, the permitting office shall issue a Movement Permit and seal.~~

~~**D.**~~**A.** ~~Any~~ Seals. Any person ~~moving~~ importing protected native plants shall obtain ~~the following~~ import seals from the Department and securely attach the ~~appropriate~~ seal directly to each protected native ~~plant :~~ plant.

~~1. Protected native plant seals identify protected native plants, except saguaro cacti, that will be moved from locations that are not the original growing sites.~~

~~2. Imported seals identify all imported protected native plants.~~

~~**E.**~~**B.** ~~Tag, seal,~~ Tag and cord attachment.

1. A permittee shall attach a cord sealing tag to each protected native plant taken from its original growing site, using cord provided by the Department, before transport. No other type of rope, string, twine, or wire is allowed.
2. The cord shall be securely tied around the plant, and the cord sealing tag ~~attached~~ placed directly over the knot in the cord and the ends pressed firmly together sealing the knot so that it cannot be removed without breaking the ~~seal~~ tag or cutting the cord.

~~3. The tag shall be placed directly over the knot in the cord and the ends pressed firmly together sealing the knot so that it cannot be removed for reuse.~~

~~4. The protected native plant seal shall be placed directly over the knot and snapped firmly closed, sealing the knot.~~

~~5. The imported seal shall be attached directly to the plant.~~

~~6.~~3. Upon loading the plant, every effort shall be made to allow visibility of the tag during transport.

R3-3-1108. Recordkeeping; Salvage Assessed and Harvest Restricted Native Plants

A. Salvage Assessed Native Plants.

1. A permittee shall maintain a record of each protected native plant removed under an annual permit for two years from the date of each transaction and allow Department inspection of the records during normal business hours. The transaction record shall include

the date salvage ~~restricted~~ assessed protected native plants were removed, the location where the plants were taken from, the location where the plants were replanted, and the permit and tag numbers.

2. A permittee shall maintain a record of written permission granted by a landowner for the collection of salvage assessed native plants.

~~2.~~3. Annually, by January 31, a permittee shall submit to the Department a copy of each transaction record for the prior calendar year.

B. Harvest Restricted Native Plants. A permittee shall submit to the Department by the tenth day of each month the transaction records for the previous month, or a written statement that no transactions were conducted for that month.

R3-3-1109. ~~Arizona Native Plant Law Education~~ Repealed

~~**A.** The Department may schedule seminars and training courses on an as-needed basis.~~

~~**B.** In addition to the following fees, charges for printed materials or pamphlets shall be assessed based upon printing and mailing costs:~~

~~1. A person attending a seminar or training course on Arizona native plant law shall pay a nonrefundable fee of $10 to the Department before attending the class.~~

~~2. A person convicted of violating Arizona native plant laws and ordered by a court to attend a native plant educational class shall pay a nonrefundable fee of $25 to the Department before attending the class. The Department shall provide written confirmation of satisfactory completion to a person ordered by a court to attend a class.~~

R3-3-1110. Permit Denial

~~Upon notice of denial of a permit, an applicant may request, in writing, that the Department provide an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10, to appeal the denial.~~

A. A person that is found in violation of A.R.S. § 3-908 or the rules of this Article shall be denied a permit, tag, or seal applied for or issued, pursuant to this Article.

B. Upon notice of denial of a permit, an applicant may request, in writing, that the Department provide an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10, to appeal the denial.

Appendix A. Protected Native Plants by Category

A. Highly safeguarded native plants as prescribed in A.R.S. § 3-903(B)(1), for which removal is not allowed except as provided in R3-3-1105:

~~AGAVACEAE Agave Family~~

- ~~*Agave arizonica* Gentry & Weber–Arizona agave~~
- ~~*Agave delamateri* Hodgson & Slauson~~
- ~~*Agave murpheyi* Gibson–Hohokam agave~~
- ~~*Agave parviflora* Torr.–Santa Cruz striped agave, Small-flowered agave~~
- ~~*Agave phillipsiana* Hodgson~~
- ~~*Agave schottii* Engelm. var. *treleasei* (Toumey) Kearney & Peebles~~

~~APIACEAE Parsley Family. [= Umbelliferae]~~

- ~~*Lilaeopsis schaffneriana* (Schlecht.) Coult. & Rose ssp. *recurva* (A. W. Hill) Affolter–Cienega false rush, Huachuca water umbel.~~

  ~~Syn.: *Lilaeopsis recurva* A. W. Hill~~

~~APOCYNACEAE Dogbane Family~~

- ~~*Amsonia kearneyana* Woods.–Kearney's bluestar~~
- ~~*Cycladenia humilis* Benth. var. *jonesii* (Eastw.) Welsh & Atwood–Jones' cycladenia~~

~~ASCLEPIADACEAE Milkweed Family~~

- ~~*Asclepias welshii* N. & P. Holmgren–Welsh's milkweed~~

~~ASTERACEAE Sunflower Family [= Compositae]~~

- ~~*Erigeron lemmonii* Gray–Lemmon fleabane~~
- ~~*Erigeron rhizomatus* Cronquist–Zuni fleabane~~
- ~~*Senecio franciscanus* Greene–San Francisco Peaks groundsel~~
- ~~*Senecio huachucanus* Gray–Huachuca groundsel~~

~~BURSERACEAE Torch Wood Family~~

- ~~*Bursera fagaroides* (H.B.K.) Engler–Fragrant bursera~~

~~CACTACEAE Cactus Family~~

- ~~*Carnegiea gigantea* (Engelm.) Britt. & Rose–Saguaro: 'Crested' or 'Fan-top' form~~
  ~~Syn.: *Cereus giganteus* Engelm.~~
- ~~*Coryphantha recurvata* (Engelm.) Britt. & Rose–Golden-chested beehive cactus~~
  ~~Syn.: *Mammillaria recurvata* Engelm.~~
- ~~*Coryphantha robbinsorum* (W. H. Earle) A. Zimmerman–Cochise pincushion cactus, Robbin's cory cactus.~~
  ~~Syn.: *Cochiseia robbinsorum* W.H. Earle~~
- ~~*Coryphantha scheeri* (Kuntze) L. Benson var. *robustispina* (Schott) L. Benson–Scheer's strong-spined cory cactus.~~
  ~~Syn.: *Mammillaria robustispina* Schott~~
- ~~*Echinocactus horizonthalonius* Lemaire var. *nicholii* L. Benson–Nichol's Turk's head cactus~~
- ~~*Echinocereus triglochidiatus* Engelm. var. *arizonicus* (Rose ex Orcutt) L. Benson–Arizona hedgehog cactus~~
- ~~*Echinomastus erectocentrus* (Coult.) Britt. & Rose var. *acunensis* (W.T. Marshall) L.Benson–Acuna cactus~~
  ~~Syn.: *Neolloydia erectocentra* (Coult.) L. Benson var. *acunensis* (W. T. Marshall) L. Benson~~
- ~~*Pediocactus bradyi* L. Benson–Brady's pincushion cactus~~
- ~~*Pediocactus paradinei* B. W. Benson–Paradine plains cactus~~
- ~~*Pediocactus peeblesianus* (Croizat) L. Benson var. *fickeiseniae* L. Benson~~
- ~~*Pediocactus peeblesianus* (Croizat) L. Benson var. *peeblesianus* Peebles' Navajo cactus, Navajo plains cactus~~
  ~~Syn.: *Navajoa peeblesiana* Croizat~~
- ~~*Pediocactus sileri* (Engelm.) L. Benson–Siler pincushion cactus~~
  ~~Syn.: *Utahia sileri* (Engelm.) Britt. & Rose~~

~~COCHLOSPERMACEAE Cochlospermum Family~~

- ~~*Amoreuxia gonzalezii* Sprague & Riley~~

~~CYPERACEAE Sedge Family~~

- ~~*Carex specuicola* J. T. Howell–Navajo sedge~~

~~FABACEAE Pea Family [=Leguminosae]~~

- ~~*Astragalus cremnophylax* Barneby var. *cremnophylax* Sentry milk-vetch~~
- ~~*Astragalus holmgreniorum* Barneby–Holmgren milk-vetch~~
- ~~*Dalea tentaculoides* Gentry–Gentry indigo bush~~

~~LENNOACEAE Lennoa Family~~

- ~~*Pholisma arenarium* Nutt.–Scaly-stemmed sand plant~~
- ~~*Pholisma sonorae* (Torr. ex Gray) Yatskievych–Sandfood, sandroot~~
  - ~~Syn.: *Ammobroma sonorae* Torr. ex Gray~~

~~LILIACEAE Lily Family~~

~~*Allium gooddingii* Ownbey–Goodding's onion~~

~~ORCHIDACEAE Orchid Family~~

- ~~*Cypripedium calceolus* L. var. *pubescens* (Willd.) Correll–Yellow lady's slipper~~
- ~~*Hexalectris warnockii* Ames & Correll–Texas purple spike~~
- ~~*Spiranthes delitescens* C. Sheviak~~

~~POACEAE Grass Family [=Gramineae]~~

- ~~*Puccinellia parishii* A.S. Hitchc.–Parish alkali grass~~

~~POLYGONACEAE Buckwheat Family~~

- ~~*Rumex orthoneurus* Rech. f.~~

~~PSILOTACEAE Psilotum Family~~

- ~~*Psilotum nudum* (L.) Beauv. Bush Moss, Whisk Fern~~

~~RANUNCULACEAE Buttercup Family~~

- ~~*Cimicifuga arizonica* Wats.–Arizona bugbane~~
- ~~*Clematis hirsutissima* Pursh var. *arizonica* (Heller) Erickson–Arizona leatherflower~~

~~ROSACEAE Rose Family~~

- ~~*Purshia subintegra* (Kearney) J. Hendrickson–Arizona cliffrose, Burro Creek cliffrose~~

  ~~Syn.: *Cowania subintegra* Kearney~~

~~SALICACEAE Willow Family~~

- ~~*Salix arizonica* Dorn–Arizona willow~~

~~SCROPHULARIACEAE Figwort Family~~

- ~~*Penstemon discolor* Keck–Variegated beardtongue~~

Amaryllidaceae Allium gooddingii - Goodding's onion

Apiaceae Eryngium sparganophyllum - Arizona eryngo

Apiaceae Lilaeopsis schaffneriana ssp. *recurva* - Cienega false rush, Huachuca water umbel

Apocynaceae Amsonia grandiflora - Arizona bluestar

Apocynaceae Amsonia kearneyana - Kearney's bluestar

Apocynaceae Asclepias welshii -Welsh's milkweed

Apocynaceae Cycladenia humilis var. *jonesii* - Jones' waxy dogbane

Apocynaceae Matelea tristiflora - Talayote

Asparagaceae Agave x arizonica - Arizona agave

Asparagaceae Agave delamateri - Tonto Basin agave

Asparagaceae Agave murpheyi - Hohokam agave

Asparagaceae Agave parviflora - Santa Cruz striped agave

Asparagaceae Agave phillipsiana Grand Canyon agave

Asparagaceae Agave sanpedroensis - San Pedro agave

Asparagaceae Agave schottii var. *treleasei* - Trelease agave

Asparagaceae Agave verdensis - Sacred Mountain agave

Asparagaceae Agave yavapaiensis - Page Springs agave

Asparagaceae Yucca kenabensis - Kanab yucca

Asteraceae Ericameria arizonica - Arizona heath-goldenrod

Asteraceae Erigeron lemmonii - Lemmon fleabane

Asteraceae Erigeron rhizomatus - Zuni fleabane

Asteraceae Packera franciscana - San Francisco Peaks groundsel

Asteraceae Pectis imberbis - Beardless chinchweed

Asteraceae Perityle spp. (except *Perityle emoryi*) - Rockdaisy

Asteraceae Senecio multidentatus var. *huachucanus* - Huachuca groundsel

Boraginaceae Oreocarya semiglabra - Smooth cryptantha

Boraginaceae Phacelia cronquistiana - Cronquist's phacelia

Cactaceae Carnegiea gigantea, crested form - Saguaro, "crested" or "fan-top"

Cactaceae Coryphantha recurvata - Golden-chested beehive cactus

Cactaceae Coryphantha robustispina ssp. *robustispina* - Scheer's strong-spined cory cactus

Cactaceae Coryphantha robustispina ssp. *uncinata*

Cactaceae Cylindropuntia abyssi - Peach Springs cholla

Cactacieae Cylindropuntia x *campii* - Camp's cholla

Cactaceae Echinocactus horizonthalonius ssp. *nicholii* - Nichol's Turk's head cactus

Cactaceae Echinocereus arizonicus ssp. *arizonicus* - Arizona hedgehog cactus

Cactaceae Echinomastus erectocentrus ssp. *acunensis* - Acuna cactus

Cactaceae Escobaria robbinsorum - Cochise pincushion cactus

Cactaceae Pediocactus bradyi - Brady's pincushion cactus

Cactaceae Pediocactus paradinei - Paradine plains cactus

Cactaceae Pediocactus peeblesianus - Peebles' Navajo cactus, Navajo plains cactus

Cactaceae Pediocactus sileri - Siler pincushion cactus

Cactaceae Sclerocactus sileri - House Rock Fish-Hook Cactus

Caryophyllaceae Silene rectiramea - Grand Canyon campion

Cyperaceae Carex specuicola - Navajo sedge

Fabaceae Astragalus cremnophylax var. *cremnophylax* - Sentry milkvetch

Fabaceae Astragalus endopterus - Sandbar milkvetch

Fabaceae Astragalus holmgreniorum - Holmgren milkvetch

Fabaceae Dalea tentaculoides - Gentry indigo bush

Fabaceae Acmispon mearnsii var. equisolenus

Lamiaceae Trichostema micranthum - Small flower bluecurls

Lennoaceae Pholisma arenarium - Scaly-stemmed sand plant

Lennoaceae Pholisma sonorae - Sandfood, sandroot

Malvaceae Sphaeralcea gierischii - Gierisch's globemallow

Orchidaceae Cypripedium calceolus var. *pubescens* - Yellow lady's slipper

Orchidaceae Hexalectris parviflora

Orchidaceae Hexalectris warnockii - Texas purple spike

Orchidaceae Spiranthes delitescens - Canelo Hills ladies'-tresses

Orobanchaceae Castilleja mogollonica - Mogollon Indian-paintbrush

Papaveraceae Arctomecon californica - Las Vegas bearclaw-poppy

Plantaginaceae Penstemon discolor - Variegated beardtongue

Poaceae Puccinellia parishii - Parish alkali grass

Polemoniaceae Loeseliastrum franciscanum - Wupatki calico

Polygonaceae Eriogonum mortonianum - Fredonia buckwheat

Polygonaceae Rumex orthoneurus - Chiricahua Mountain wild dock

Psilotaceae Psilotum nudum - Whisk Fern, Skeleton fork fern

Ranunculaceae Cimicifuga arizonica - Arizona bugbane

Ranunculaceae Clematis hirsutissima var. *arizonica* - Arizona leatherflower

Rosaceae Potentilla arizonica - Garland Prairie Cinquefoil

Rosaceae Purshia x *subintegra* - Arizona cliffrose, Burro Creek cliffrose

Rosaceae Purshia pinkavae - Pinkava cliffrose

Salicaceae Salix arizonica - Arizona willow

Scrophulariaceae Buddleja sessiliflora - Rio Grande butterfly bush

B. Salvage restricted native plants as prescribed in A.R.S. § 3-903(B)(2) that require a permit issued pursuant to this Article, for removal. In addition to the plants listed under Agavaceae, Cactaceae, Liliaceae, and Orchidaceae, all other species in these families are salvage restricted protected native plants:

~~AGAVACEAE Agave Family~~

- ~~*Agave chrysantha* Peebles~~
- ~~*Agave deserti* Engelm. ssp. *simplex* Gentry–Desert agave~~
- ~~*Agave mckelveyana* Gentry~~
- ~~*Agave palmeri* Engelm.~~
- ~~*Agave parryi* Engelm. var. *couseii* (Engelm. ex Trel.) Kearney & Peebles~~

- ~~*Agave parryi* Engelm. var. *huachucensis* (Baker) Little ex L. Benson~~
  ~~Syn.: *Agave huachucensis* Baker~~
- ~~*Agave parryi* Engelm. var. *parryi*~~
- ~~*Agave schottii* Engelm. var. *schottii* – Shindigger~~
- ~~*Agave toumeyana* Trel. ssp. *bella* (Breitung) Gentry~~
- ~~*Agave toumeyana* Trel. ssp. *toumeyana*~~
- ~~*Agave utahensis* Engelm. spp. *kaibabensis* (McKelvey) Gentry~~
  ~~Syn.: *Agave kaibabensis* McKelvey~~
- ~~*Agave utahensis* Engelm. var. *utahensis*~~
- ~~*Yucca angustissima* Engelm. var. *angustissima*~~
- ~~*Yucca angustissima* Engelm. var. *kanabensis* (McKelvey) Reveal~~
  ~~Syn.: *Yucca kanabensis* McKelvey~~
- ~~*Yucca arizonica* McKelvey~~
- ~~*Yucca baccata* Torr. var. *baccata*–Banana yucca~~
- ~~*Yucca baccata* Torr. var. *vespertina* McKelvey~~
- ~~*Yucca baileyi* Woot. & Standl. var. *intermedia* (McKelvey) Reveal~~
  ~~Syn.: *Yucca navajoa* Webber~~
- ~~*Yucca brevifolia* Engelm. var. *brevifolia*–Joshua tree~~
- ~~*Yucca brevifolia* Engelm. var. *jaegeriana* McKelvey~~
- ~~*Yucca elata* Engelm. var. *elata*–Soaptree yucca, palmilla~~
- ~~*Yucca elata* Engelm var. *utahensis* (McKelvey) Reveal~~
  ~~Syn.: *Yucca utahensis* McKelvey~~
- ~~*Yucca elata* Engelm. var. *verdiensis* (McKelvey) Reveal~~
  ~~Syn.: *Yucca verdiensis* McKelvey~~
- ~~*Yucca harrimaniae* Trel.~~
- ~~*Yucca schidigera* Roezl.–Mohave yucca, Spanish dagger~~
- ~~*Yucca schottii* Engelm.–Hairy yucca~~
- ~~*Yucca thornberi* McKelvey~~
- ~~*Yucca whipplei* Torr. var. *whipplei*–Our Lord's candle~~
  ~~Syn.: *Yucca newberryi* McKelvey~~

~~AMARYLLIDACEAE Amaryllis Family~~

~~*Zephyranthes longifolia* Hemsl.–Plains Rain Lily~~

~~ANACARDIACEAE Sumac Family~~

~~*Rhus kearneyi* Barkley–Kearney Sumac~~

~~ARECACEAE Palm Family [=Palmae]~~

- ~~*Washingtonia filifera* (Linden ex Andre) H. Wendl–California fan palm~~

~~ASTERACEAE Sunflower Family [=Compositae]~~

- ~~*Cirsium parryi* (Gray) Petrak ssp. *mogollonicum* Schaak~~
- ~~*Cirsium virginensis* Welsh–Virgin thistle~~
- ~~*Erigeron kuschei* Eastw.–Chiricahua fleabane~~
- ~~*Erigeron piscaticus* Nesom–Fish Creek fleabane~~
- ~~*Flaveria macdougalii* Theroux, Pinkava & Keil~~
- ~~*Perityle ajoensis* Todson–Ajo rock daisy~~
- ~~*Perityle cochisensis* (Niles) Powell–Chiricahua rock daisy~~
- ~~*Senecio quaerens* Greene–Gila groundsel~~

~~BURSERACEAE Torch-Wood Family~~

- ~~*Bursera microphylla* Gray–Elephant tree, torote~~

~~CACTACEAE Cactus Family~~

- ~~*Carnegiea gigantea* (Engelm.) Britt. & Rose–Saguaro~~
  ~~Syn.: *Cereus giganteus* Engelm.~~
- ~~*Coryphantha missouriensis* (Sweet) Britt. & Rose~~
- ~~*Coryphantha missouriensis* (Sweet) Britt. & Rose var. *marstonii* (Clover) L. Benson~~
- ~~*Coryphantha scheeri* (Kuntze) L. Benson var. *valida* (Engelm.) L. Benson~~
- ~~*Coryphantha strobiliformis* (Poselger) var. *orcuttii* (Rose) L. Benson~~
- ~~*Coryphantha strobiliformis* (Poselger) var. *strobiliformis*~~
- ~~*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *alversonii* (Coult.) L. Benson~~
- ~~*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *arizonica* (Engelm.) W. T. Marshall~~
  ~~Syn.: *Mammillaria arizonica* Engelm.~~
- ~~*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *bisbeeana* (Orcutt) L. Benson~~
- ~~*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *deserti* (Engelm.) W. T. Marshall~~
  ~~Syn.: *Mammillaria chlorantha* Engelm.~~
- ~~*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *rosea* (Clokey) L. Benson~~
- ~~*Echinocactus polycephalus* Engelm. & Bigel. var. *polycephalus*~~
- ~~*Echinocactus polycephalus* Engelm. & Bigel. var. *xeranthemoides* Engelm. ex Coult.~~
  ~~Syn.: *Echinocactus xeranthemoides* Engelm. ex Coult.~~
- ~~*Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *acicularis* L. Benson~~
- ~~*Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *armatus* L. Benson~~
- ~~*Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *chrysocentrus* L. Benson~~
- ~~*Echinocereus engelmannii* (Parry ex. Engelm.) Lemaire var. *engelmannii*~~
- ~~*Echinocereus engelmannii* (Parry) Lemaire var. *variegatus* (Engelm.) Engelm. ex Rümpler~~
- ~~*Echinocereus fasciculatus* (Engelm. ex B. D. Jackson) L. Benson var. fasciculatus~~
  ~~Syn.: *Echinocereus fendleri* (Engelm.) Rümpler var. *fasciculatus* (Engelm. ex B. D. Jackson) N. P. Taylor, *Echinocereus fendleri* (Engelm.) Rümpler var. *robusta* L. Benson; *Mammillaria fasciculata* Engelm.~~

- ~~*Echinocereus fasciculatus* (Engelm. ex B. D. Jackson) L. Benson var. *bonkerae* (Thornber & Bonker) L. Benson.~~
  ~~Syn.: *Echinocereus boyce-thompsonii* Orcutt var. *bonkerae* Peebles; *Echinocereus fendleri* (Engelm.) Rümpler var. *bonkerae* (Thornber & Bonker) L. Benson~~
- ~~*Echinocereus fasciculatus* (Engelm. ex B. D. Jackson) L. Benson var. *boyce-thompsonii* (Orcutt) L. Benson~~
  ~~Syn.: *Echinocereus boyce-thompsonii* Orcutt~~
- ~~*Echinocereus fendleri* (Engelm.) Rümpler var. *boyce-thompsonii* (Orcutt) L. Benson~~
- ~~*Echinocereus fendleri* (Engelm.) Rümpler var. *fendleri*~~
- ~~*Echinocereus fendleri* (Engelm.) Rümpler var. *rectispinus* (Peebles) L. Benson~~
- ~~*Echinocereus ledingii* Peebles~~
- ~~*Echinocereus nicholii* (L. Benson) Parfitt.~~
  ~~Syn.: *Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *nicholii* L. Benson~~
- ~~*Echinocereus pectinatus* (Scheidw.) Engelm. var. *dasyacanthus* (Engelm.) N. P. Taylor~~
  ~~Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *neomexicanus* (Coult.) L. Benson~~
- ~~*Echinocereus polyacanthus* Engelm. (1848) var. *polyacanthus*~~
- ~~*Echinocereus pseudopectinatus* (N. P. Taylor) N. P. Taylor~~
  ~~Syn.: *Echinocereus bristolii* W. T. Marshall var. *pseudopectinatus* N. P. Taylor, *Echinocereus pectinatus* (Scheidw.) Engelm. var. *pectinatus sensu* Kearney and Peebles, Arizona Flora, and L. Benson, The Cacti of Arizona and The Cacti of the United States and Canada.~~
- ~~*Echinocereus rigidissimus* (Engelm.) Hort. F. A. Haage.~~
  ~~Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *rigidissimus* (Engelm.) Engelm. ex Rümpler–Rainbow cactus~~
- ~~*Echinocereus triglochidiatus* Engelm. var. *gonacanthus* (Engelm. & Bigel.) Boiss.~~
- ~~*Echinocereus triglochidiatus* Engelm. var. *melanacanthus* (Engelm.) L. Benson~~
  ~~Syn.: *Mammillaria aggregata* Engelm.~~
- ~~*Echinocereus triglochidiatus* Engelm. var. *mojavensis* (Engelm.) L. Benson~~
- ~~*Echinocereus triglochidiatus* Engelm. var. *neomexicanus* (Standl.) Standl. ex W. T. Marshall.~~
  ~~Syn.: *Echinocereus triglochidiatus* Engelm. var. *polyacanthus* (Engelm. 1859 non 1848) L. Benson~~
- ~~*Echinocereus triglochidiatus* Engelm. var. *triglochidiatus*~~
- ~~*Echinomastus erectocentrus* (Coult.) Britt. & Rose var. *erectocentrus*~~
  ~~Syn.: *Neolloydia erectocentra* (Coult.) L. Benson var. *erectocentra*~~
- ~~*Echinomastus intertextus* (Engelm.) Britt. & Rose Syn.: *Neolloydia intertexta* (Engelg.) L. Benson~~
- ~~*Echinomastus johnsonii* (Parry) Baxter–Beehive cactus~~
  ~~Syn.: *Neolloydia johnsonii* (Parry) L. Benson~~
- ~~*Epithelantha micromeris* (Engelm.) Weber ex Britt. & Rose~~
- ~~*Ferocactus cylindraceus* (Engelm.) Orcutt var. *cylindraceus*–Barrel cactus~~
  ~~Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *acanthodes*~~
- ~~*Ferocactus cylindraceus* (Engelm.) Orcutt var. *eastwoodiae* (Engelm.) N. P. Taylor~~
  ~~Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *eastwoodiae* L. Benson; Ferocactus eastwoodiae (L. Benson) L. Benson~~

- ~~*Ferocactus cylindraceus* (Engelm.) Orcutt. var. *lecontei* (Engelm.) H. Bravo~~

  ~~Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *leconti* (Engelm.) Lindsay; *Ferocactus lecontei* (Engelm.) Britt. & Rose~~

- ~~*Ferocactus emoryi* (Engelm.) Orcutt–Barrel cactus~~

  ~~Syn.: *Ferocactus covillei* Britt. & Rose~~

- ~~*Ferocactus wislizenii* (Engelm.) Britt. & Rose–Barrel cactus~~

- ~~*Lophocereus schottii* (Engelm.) Britt. & Rose–Senita~~

- ~~*Mammillaria grahamii* Engelm. var. *grahamii*~~

- ~~*Mammillaria grahamii* Engelm. var. *oliviae* (Orcutt) L. Benson~~

  ~~Syn.: *Mammillaria oliviae* Orcutt~~

- ~~*Mammillaria heyderi* Mühlenpf. var. *heyderi*~~

  ~~Syn.: *Mammillaria gummifera* Engelm. var. *applanata* (Engelm.) L. Benson~~

- ~~*Mammillaria heyderi* Mühlenpf. var. *macdougalii* (Rose) L. Benson~~

  ~~Syn.: *Mammillaria gummifera* Engelm. var. *macdougalii* (Rose) L. Benson; *Mammillaria macdougalii* Rose~~

- ~~*Mammillaria heyderi* Mühlenpf. var. *meiacantha* (Engelm.) L. Benson~~

  ~~Syn.: *Mammillaria gummifera* Engelm. var. *meiacantha* (Engelm.) L. Benson~~

- ~~*Mammillaria lasiacantha* Engelm.~~

- ~~*Mammillaria mainiae* K. Brand.~~

- ~~*Mammillaria microcarpa* Engelm.~~

- ~~*Mammillaria tetrancistra* Engelm.~~

- ~~*Mammillaria thornberi* Orcutt~~

- ~~*Mammillaria viridiflora* (Britt. & Rose) Bödeker. Syn.: *Mammillaria orestra* L. Benson~~

- ~~*Mammillaria wrightii* Engelm. var. *wilcoxii* (Toumey ex K. Schumann) W. T. Marshall~~

  ~~Syn.: *Mammillaria wilcoxii* Toumey~~

- ~~*Mammillaria wrightii* Engelm. var. *wrightii*~~

- ~~*Opuntia acanthocarpa* Engelm. & Bigel. var. *acanthocarpa*–Buckhorn cholla~~

- ~~*Opuntia acanthocarpa* Engelm. & Bigel. var. *coloradensis* L. Benson~~

- ~~*Opuntia acanthocarpa* Engelm. & Bigel. var. *major* L. Benson~~

  ~~Syn.: *Opuntia acanthocarpa* Engelm. & Bigel var. *ramosa* Peebles~~

- ~~*Opuntia acanthocarpa* Engelm. & Bigel. var. *thornberi* (Thornber & Bonker) L. Benson~~

  ~~Syn.: *Opuntia thornberi* Thornber & Bonker~~

- ~~*Opuntia arbuscula* Engelm.–Pencil cholla~~

- ~~*Opuntia basilaris* Engelm. & Bigel. var. *aurea* (Baxter) W. T. Marshall–Yellow beavertail~~

  ~~Syn.: *Opuntia aurea* Baxter~~

- ~~*Opuntia basilaris* Engelm. & Bigel. var. *basilaris*–Beavertail cactus~~

- ~~*Opuntia basilaris* Engelm. & Bigel. var. *longiareolata* (Clover & Jotter) L. Benson~~

- ~~*Opuntia basilaris* Engelm. & Bigel. var. *treleasei* (Coult.) Toumey~~

- ~~*Opuntia bigelovii* Engelm.–Teddy-bear cholla~~

- ~~*Opuntia campii* nicd.~~
- ~~*Opuntia canada* Griffiths (*O. phaeacantha* Engelm. var. *laevis X major* and *O. gilvescens* Griffiths).~~
- ~~*Opuntia chlorotica* Engelm. & Bigel.–Pancake prickly-pear~~
- ~~*Opuntia clavata* Engelm.–Club cholla~~
- ~~*Opuntia curvospina* Griffiths~~
- ~~*Opuntia echinocarpa* Engelm. & Bigel–Silver cholla~~
- ~~*Opuntia emoryi* Engelm.–Devil cholla~~

  ~~Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *stanlyi*~~
- ~~*Opuntia engelmannii* Salm-Dyck ex Engelm. var. *engelmannii*–Engelmann's prickly-pear~~

  ~~Syn.: *Opuntia phaeacantha* Engelm. var. *discata* (Griffiths) Benson & Walkington~~
- ~~*Opuntia engelmannii* Salm-Dyck ex Engelm. var. *flavospina* (L.Benson) Parfitt & Pinkava~~

  ~~Syn.: *Opuntia phaeacantha* Engelm. var. *flavispina* L. Benson~~
- ~~*Opuntia erinacea* Engelm. & Bigel. var. *erinacea*–Mohave prickly-pear~~
- ~~*Opuntia erinacea* Engelm. & Bigel. var. *hystricina* (Engelm. & Bigel.) L. Benson~~

  ~~Syn.: *Opuntia hystricina* Engelm. & Bigel.~~
- ~~*Opuntia erinacea* Engelm. & Bigel. var. *ursina* (Weber) Parish–Grizzly bear prickly-pear~~

  ~~Syn.: *Opuntia ursina* Weber~~
- ~~*Opuntia erinacea* Engelm. & Bigel. var. *utahensis* (Engelm.) L. Benson~~

  ~~Syn.: *Opuntia rhodantha* Schum.~~
- ~~*Opuntia fragilis* Nutt. var. *brachyarthra* (Engelm. & Bigel.) Coult.~~
- ~~*Opuntia fragilis* Nutt. var. *fragilis*–Little prickly-pear~~
- ~~*Opuntia fulgida* Engelm. var. *fulgida*–Jumping chain-fruit cholla~~
- ~~*Opuntia fulgida* Engelm. var. *mammillata* (Schott) Coult.~~
- ~~*Opuntia imbricata* (Haw.) DC.–Tree cholla~~
- ~~*Opuntia X kelvinensis* V. & K. Grant pro sp.~~

  ~~Syn.: *Opuntia kelvinensis* V. & K. Grant~~
- ~~*Opuntia kleiniae* DC. var. *tetracantha* (Toumey) W. T. Marshall~~

  ~~Syn.: *Opuntia tetrancistra* Toumey~~
- ~~*Opuntia kunzei* Rose.~~

  ~~Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *kunzei* (Rose) L. Benson; *Opuntia kunzei* Rose var. *wrightiana* (E. M. Baxter) Peebles; *Opuntia wrightiana* E. M. Baxter~~
- ~~*Opuntia leptocaulis* DC.–Desert Christmas cactus, Pencil cholla~~
- ~~*Opuntia littoralis* (Engelm.) Cockl. var. *vaseyi* (Coult.) Benson & Walkington~~
- ~~*Opuntia macrocentra* Engelm.–Purple prickly-pear~~

  ~~Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *macrocentra* (Engelm.) L. Benson; *Opuntia violacea* Engelm. ex B. D. Jackson var. *violacea*~~
- ~~*Opuntia macrorhiza* Engelm. var. *macrorhiza*–Plains prickly-pear~~

  ~~Syn.: *Opuntia plumbea* Rose~~

- ~~*Opuntia macrorhiza* Engelm. var. *pottsii* (Salm-Dyck) L. Benson~~
- ~~*Opuntia martiniana* (L. Benson) Parfitt~~

  ~~Syn.: *Opuntia littoralis* (Engelm.) Cockerell var. *martiniana* (L. Benson) L. Benson; *Opuntia macrocentra* Engelm. var. *martiniana L. Benson*~~
- ~~*Opuntia nicholii* L. Benson–Navajo Bridge prickly-pear~~
- ~~*Opuntia parishii* Orcutt.~~

  ~~Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *parishii* (Orcutt) L. Benson~~
- ~~*Opuntia phaeacantha* Engelm. var. *laevis* (Coult.) L. Benson~~

  ~~Syn.: *Opuntia laevis* Coult.~~
- ~~*Opuntia phaeacantha* Engelm. var. *major* Engelm.~~
- ~~*Opuntia phaeacantha* Engelm. var. *phaeacantha*~~
- ~~*Opuntia phaeacantha* Engelm. var. *superbospina* (Griffiths) L. Benson~~
- ~~*Opuntia polyacantha* Haw. var. *juniperina* (Engelm.) L. Benson~~
- ~~*Opuntia polyacantha* Haw. var. *rufispina* (Engelm.) L. Benson~~
- ~~*Opuntia polyacantha* Haw. var. *trichophora* (Engelm. & Bigel.) L. Benson~~
- ~~*Opuntia pulchella* Engelm.–Sand cholla~~
- ~~*Opuntia ramosissima* Engelm.–Diamond cholla~~
- ~~*Opuntia santa-rita* (Griffiths & Hare) Rose–Santa Rita prickly-pear~~

  ~~Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *santa-rita* (Griffiths & Hare) L. Benson~~
- ~~*Opuntia spinosior* (Engelm.) Toumey–Cane cholla~~
- ~~*Opuntia versicolor* Engelm.–Staghorn cholla~~
- ~~*Opuntia vivipara* Engelm~~
- ~~*Opuntia whipplei* Engelm. & Bigel. var. *multigeniculata* (Clokey) L. Benson~~
- ~~*Opuntia whipplei* Engelm. & Bigel. var. *whipplei*–Whipple cholla~~
- ~~*Opuntia wigginsii* L. Benson~~
- ~~*Pediocactus papyracanthus* (Engelm.) L. Benson Grama grass cactus~~

  ~~Syn.: *Toumeya papyracanthus* (Engelm.) Britt. & Rose~~
- ~~*Pediocactus simpsonii* (Engelm.) Britt & Rose var. *simpsonii*~~
- ~~*Peniocereus greggii* (Engelm.) Britt. & Rose var. *greggii*–Night-blooming cereus~~

  ~~Syn.: *Cereus greggii* Engelm.~~
- ~~*Peniocereus greggii* (Engelm.) Britt & Rose var. *transmontanus*–Queen-of-the-Night~~
- ~~*Peniocereus striatus* (Brandegee) Buxbaum.~~

  ~~Syn.: *Neoevansia striata* (Brandegee) Sanchez-Mejorada; *Cereus striatus* Brandegee; *Wilcoxia diguetii* (Webber) Peebles~~
- ~~*Sclerocactus parviflorus* Clover & Jotter var. *intermedius* (Peebles) Woodruff & L. Benson~~

  ~~Syn.: *Sclerocactus intermedius* Peebles~~
- ~~*Sclerocactus parviflorus* Clover & Jotter var. *parviflorus*~~

  ~~Syn.: *Sclerocactus whipplei* (Engelm. & Bigel.) Britt. & Rose var. *roseus* (Clover) L. Benson~~
- ~~*Sclerocactus pubispinus* (Engelm.) L. Peebles~~

- ~~*Sclerocactus spinosior* (Engelm.) Woodruff & L. Benson~~

  ~~Syn.: *Sclerocactus pubispinus* (Engelm.) L. Benson var. *sileri* L. Benson~~

- ~~*Sclerocactus whipplei* (Engelm. & Bigel.) Britt. & Rose~~

- ~~*Stenocereus thurberi* (Engelm.) F. Buxbaum–Organ pipe cactus~~

  ~~Syn.: *Cereus thurberi* Engelm.; *Lemairocereus thurberi* (Engelm.) Britt. & Rose~~

~~CAMPANULACEAE Bellflower Family~~

- ~~*Lobelia cardinalis* L. ssp. *graminea* (Lam.) McVaugh–Cardinal flower~~

- ~~*Lobelia fenestralis* Cav.–Leafy lobelia~~

- ~~*Lobelia laxiflora* H. B. K. var. *angustifolia* A. DC.~~

~~CAPPARACEAE Cappar Family [=Capparidaceae]~~

- ~~*Cleome multicaulis* DC.–Playa spiderflower~~

~~CHENOPODIACEAE Goosefoot Family~~

- ~~*Atriplex hymenelytra* (Torr.) Wats.~~

~~CRASSULACEAE Stonecrop Family~~

- ~~*Dudleya arizonica* (Nutt.) Britt. & Rose~~

  ~~Syn.: *Echeveria pulverulenta* Nutt. ssp. *arizonica* (Rose) Clokey~~

- ~~*Dudleya saxosa* (M.E. Jones) Britt. & Rose ssp. *collomiae* (Rose) Moran~~

  ~~Syn.: *Echeveria collomiae* (Rose) Kearney & Peebles~~

- ~~*Graptopetalum bartramii* Rose~~

  ~~Syn.: *Echevaria bartramii* (Rose) K. & P.~~

- ~~*Graptopetalum bartramii* Rose–Bartram's stonecrop, Bartram's live-forever~~

  ~~Syn.: *Echeveria bartramii* (Rose) Kearney & Peebles~~

- ~~*Graptopetalum rusbyi* (Greene) Rose~~

  ~~Syn.: *Echeveria rusbyi* (Greene) Nels. & Macbr.~~

- ~~*Sedum cockerellii* Britt.~~

- ~~*Sedum griffithsii* Rose~~

- ~~*Sedum lanceolatum* Torr.~~

  ~~Syn.: *Sedum stenopetalum* Pursh~~

- ~~*Sedum rhodanthum* Gray~~

- ~~*Sedum stelliforme* Wats.~~

~~CROSSOSOMATACEAE Crossosoma Family~~

- ~~*Apacheria chiricahuensis* C. T. Mason–Chiricahua rock flower~~

~~CUCURBITACEAE Gourd Family~~

- ~~*Tumamoca macdougalii* Rose–Tumamoc globeberry~~

~~EUPHORBIACEAE Spurge Family~~

- ~~*Euphorbia plummerae* Wats.–Woodland spurge~~

- ~~*Sapium biloculare* (Wats.) Pax–Mexican jumping-bean~~

~~FABACEAE Pea Family [=Leguminosae]~~

- ~~*Astragalus corbrensis* Gray var. *maguirei* Kearney~~
- ~~*Astragalus eremnophylax* Barneby var. *myriorraphis* Barneby–Cliff milk-vetch~~
- ~~*Astragalus hypoxylus* Wats.–Huachuca milk-vetch~~
- ~~*Astragalus nutriosensis* Sanderson–Nutrioso milk-vetch~~
- ~~*Astragalus xiphoides* (Barneby) Barneby–Gladiator milk-vetch~~
- ~~*Cercis occidentalis* Torr.–California redbud~~
- ~~*Errazurizia rotundata* (Woot.) Barneby~~
  ~~Syn.: *Parryella rotundata* Woot.~~
- ~~*Lysiloma microphylla* Benth. var. *thornberi* (Britt. & Rose) Isely–Feather bush~~
  ~~Syn.: *Lysiloma thornberi* Britt. & Rose~~
- ~~*Phaseolus supinus* Wiggins & Rollins~~

~~FOUQUIERIACEAE Ocotillo Family~~

- ~~*Fouquieria splendens* Engelm.–Ocotillo, coach-whip, monkey-tail~~

~~GENTIANACEAE Gentian Family~~

- ~~*Gentianella wislizenii* (Engelm.) J. Gillett~~
  ~~Syn.: *Gentiana wislizenii* Engelm.~~

~~LAMIACEAE Mint Family~~

- ~~*Hedeoma diffusum* Green–Flagstaff pennyroyal~~
- ~~*Salvia dorrii* ssp. *mearnsii*~~
- ~~*Trichostema micranthum* Gray~~

~~LILIACEAE Lily Family~~

- ~~*Allium acuminatum* Hook.~~
- ~~*Allium bigelovii* Wats.~~
- ~~*Allium biseptrum* Wats. var. *palmeri* (Wats.) Cronq.~~
  ~~Syn.: *Allium palmeri* Wats.~~
- ~~*Allium cernuum* Roth. var. *neomexicanum* (Rydb.) Macbr.–Nodding onion~~
- ~~*Allium cernuum* Roth. var. *obtusum* Ckll.~~
- ~~*Allium geyeri* Wats. var. *geyeri*~~
- ~~*Allium geyeri* Wats. var. *tenerum* Jones~~
- ~~*Allium kunthii* Don~~
- ~~*Allium macropetalum* Rydb.~~
- ~~*Allium nevadense* Wats. var. *cristatum* (Wats.) Ownbey~~
- ~~*Allium nevadense* Wats. var. *nevadense*~~
- ~~*Allium parishii* Wats.~~
- ~~*Allium plummerae* Wats.~~

- ~~*Allium rhizomatum* Woot. & Standl. Incl.: *Allium glandulosum* Link & Otto *sensu* Kearney & Peebles~~
- ~~*Androstephium breviflorum* Wats.–Funnel-lily~~
- ~~*Calochortus ambiguus* (Jones) Ownbey~~
- ~~*Calochortus aureus* Wats.~~

  ~~Syn.: *Calochortus nuttallii* Torr. & Gray var. *aureus* (Wats.) Ownbey~~
- ~~*Calochortus flexuosus* Wats.–Straggling mariposa~~
- ~~*Calochortus gunnisonii* Wats.~~
- ~~*Calochortus kennedyi* Porter var. *kennedyi*–Desert mariposa~~
- ~~*Calochortus kennedyi* Porter var. *munzii* Jeps.~~
- ~~*Dichelostemma pulchellum* (Salisbi) Heller var. *pauciflorum* (Torr.) Hoover~~
- ~~*Disporum trachycarpum* (Wats.) Benth. & Hook. var. *subglabrum* Kelso~~
- ~~*Disporum trachycarpum* (Wats.) Benth. & Hook. var. *trachycarpum*~~
- ~~*Echeandia flavescens* (Schultes & Schultes) Cruden~~

  ~~Syn.: *Anthericum torreyi* Baker~~
- ~~*Eremocrinum albomarginatum* Jones~~
- ~~*Fritillaria atropurpurea* Nutt.~~
- ~~*Hesperocallis undulata* Gray–Ajo lily~~
- ~~*Lilium parryi* Wats.–Lemon lily~~
- ~~*Lilium umbellatum* Pursh~~
- ~~*Maianthemum racemosum* (L.) Link. ssp. *amplexicaule* (Nutt.) LaFrankie~~

  ~~Syn.: *Smilacina racemosa* (L.) Desf. var. *amplexicaulis* (Nutt.) Wats.~~
- ~~*Maianthemum racemosum* (L.) Link ssp. *racemosum*–False Solomon's seal~~

  ~~Syn.: *Smilacina racemosa* (L.) Desf. var. *racemosa*; *Smilacina racemosa* (L.) Desf. var. *cylindrata* Fern.~~
- ~~*Maianthemum stellatum* (L.) Link~~

  ~~Syn.: *Smilacina stellata* (L.) Desf.–Starflower~~
- ~~*Milla biflora* Cav.–Mexican star~~
- ~~*Nothoscordum texanum* Jones~~
- ~~*Polygonatum cobrense* (Woot. & Standl.) Gates~~
- ~~*Streptopus amplexifolius* (L.) DC.–Twisted stalk~~
- ~~*Triteleia lemmonae* (Wats.) Greene~~
- ~~*Triteleiopsis palmeri* (Wats.) Hoover~~
- ~~*Veratrum californicum* Durand.–False hellebore~~
- ~~*Zephyranthes longifolia* Hemsl.–Plains rain lily~~
- ~~*Zigadenus elegans* Pursh–White camas, alkali-grass~~
- ~~*Zigadenus paniculatus* (Nutt.) Wats.–Sand-corn~~
- ~~*Zigadenus virescens* (H. B. K.) Macbr.~~

~~MALVACEAE Mallow Family~~

- ~~*Abutilon parishii* Wats.–Tucson Indian mallow~~
- ~~*Abutilon thurberi* Gray–Baboquivari Indian mallow~~

- ~~NOLINACEAE Nolina~~
  - ~~*Dasylirion wheeleri* Wats.–Sotol, desert spoon~~
  - ~~*Nolina bigelovii* (Torr.)Wats.–Bigelow's nolina~~
  - ~~*Nolina microcarpa* Wats.–Beargrass, sacahuista~~
  - ~~*Nolina parryi* Wats.–Parry's nolina~~
  - ~~*Nolina texana* Wats. var. *compacta* (Trel.) Johnst.– Bunchgrass~~

~~ONAGRACEAE Evening Primrose Family~~

- ~~*Camissonia exilis* (Raven) Raven~~

~~ORCHIDACEAE Orchid Family~~

- ~~*Calypso bulbosa* (L.) Oakes var. *americana* (R. Br.) Luer~~
- ~~*Coeloglossum viride* (L.) Hartmann var. *virescens* (Muhl.) Luer~~
  ~~Syn.: *Habenaria viridis* (L.) R. Br. var. *bracteata* (Muhl.) Gray~~
- ~~*Corallorhiza maculata* Raf.–Spotted coral root~~
- ~~*Corallorhiza striata* Lindl.–Striped coral root~~
- ~~*Corallorhiza wisteriana* Conrad–Spring coral root~~
- ~~*Epipactis gigantea* Douglas ex Hook.–Giant helleborine~~
- ~~*Goodyera oblongifolia* Raf.~~
- ~~*Goodyera repens* (L.) R. Br.~~
- ~~*Hexalectris spicata* (Walt.) Barnhart–Crested coral root~~
- ~~*Listera convallarioides* (Swartz) Nutt.–Broad-leaved twayblade~~
- ~~*Malaxis corymbosa* (S. Wats.) Kuntze~~
- ~~*Malaxis ehrenbergii* (Reichb. f.) Kuntze~~
- ~~*Malaxis macrostachya* (Lexarza) Kuntze–Mountain malaxia~~
  ~~Syn.: *Malaxis soulei* L. O. Williams~~
- ~~*Malaxis tenuis* (S. Wats.) Ames~~
- ~~*Platanthera hyperborea* (L.) Lindley var. *gracilis* (Lindley) Luer~~
  - ~~Syn.: *Habenaria sparsiflora* Wats. var. *laxiflora* (Rydb.) Correll~~
- ~~*Platanthera hyperborea* (L.) Lindley var. *hyperborea*–Northern green orchid~~
  ~~Syn.: *Habenaria hyperborea* (L.) R. Br.~~
- ~~*Platanthera limosa* Lindl.–Thurber's bog orchid~~
  ~~Syn.: *Habenaria limosa* (Lindley) Hemsley~~
- ~~*Platanthera sparsiflora* (Wats.) Schlechter var. *ensifolia* (Rydb.) Luer~~
- ~~*Platanthera sparsiflora* (Wats.) var. *laxiflora* (Rydb.) Correll~~
- ~~*Platanthera sparsiflora* (Wats.) Schlechter var. *sparsiflora*–Sparsely-flowered bog orchid~~
  ~~Syn.: *Habenaria sparsiflora* Wats.~~

- ~~*Platanthera stricta* Lindl.–Slender bog orchid~~

  ~~Syn.: *Habenaria saccata* Greene; *Platanthera saccata* (Greene) Hulten~~

- ~~*Platanthera viridis* (L.) R. Br. var. *bracteata* (Muhl.) Gray–Long-bracted habenaria~~

- ~~*Spiranthes michauceana* (La Llave & Lex.) Hemsl.~~

- ~~*Spiranthes parasitica* A. Rich. & Gal.~~

- ~~*Spiranthes romanzoffiana* Cham.–Hooded ladies tresses~~

- ~~PAPAVERACEAE Poppy Family~~

  - ~~*Arctomecon californica* Torr. & Frém.–Golden-bear poppy, Yellow-flowered desert poppy~~

~~PINACEAE Pine Family~~

- ~~*Pinus aristata* Engelm.–Bristlecone pine~~

~~POLYGONACEAE Buckwheat Family~~

- ~~*Eriogonum apachense* Reveal~~

- ~~*Eriogonum capillare* Small~~

- ~~*Eriogonum mortonianum* Reveal–Morton's buckwheat~~

- ~~*Eriogonum ripleyi* J. T. Howell–Ripley's wild buckwheat, Frazier's Well buckwheat~~

- ~~*Eriogonum thompsonae* Wats. var. *atwoodii* Reveal–Atwood's buckwheat~~

~~PORTULACEAE Purslane Family~~

- ~~*Talinum humile* Greene–Pinos Altos flame flower~~

- ~~*Talinum marginatum* Greene~~

- ~~*Talinum validulum* Greene–Tusayan flame flower~~

~~PRIMULACEAE Primrose Family~~

- ~~*Dodecatheon alpinum* (Gray) Greene ssp. *majus* H. J. Thompson~~

- ~~*Dodecatheon dentatum* Hook. ssp. *ellisiae* (Standl.) H. J. Thompson~~

- ~~*Dodecatheon pulchellum* (Raf.) Merrill~~

- ~~*Primula hunnewellii* Fern.~~

- ~~*Primula rusbyi* Greene~~

- ~~*Primula specuicola* Rydb.~~

~~RANUNCULACEAE Buttercup Family~~

- ~~*Aquilegia caerulea* James ssp. *pinetorum* (Tidest.) Payson–Rocky Mountain Columbine~~

- ~~*Aquilegia chrysantha* Gray~~

- ~~*Aquilegia desertorum* (Jones) Ckll.–Desert columbine, Mogollon columbine~~

- ~~*Aquilegia elegantula* Greene~~

- ~~*Aquilegia longissima* Gray–Long Spur Columbine~~

- ~~*Aquilegia micrantha* Eastw.~~

- ~~*Aquilegia triternata* Payson~~

~~ROSACEAE Rose Family~~

- ~~*Rosa stellata* Woot.~ ssp. *abyssa* A. Phillips Grand Canyon rose~~
- ~~*Vauquelinia californica* (Torr.) Sarg. ssp. *pauciflora* (Standl.) Hess & Henrickson~ Few-flowered Arizona rosewood~~

~~SCROPHULARIACEAE Figwort Family~~

- ~~*Castilleja mogollonica* Pennell~~
- ~~*Penstemon albomarginatus* Jones~~
- ~~*Penstemon bicolor* (Brandeg.) Clokey & Keck ssp. *roseus* Clokey & Keck~~
- ~~*Penstemon clutei* A. Nels.~~
- ~~*Penstemon distans* N. Holmgren~ Mt. Trumbull beardtongue~~
- ~~*Penstemon linarioides* spp. maguirei~~

~~SIMAROUBACEAE Simarouba Family~~

- ~~*Castela emoryi* (Gray) Moran & Felger~ Crucifixion thorn~~
- ~~Syn.: *Holacantha emoryi* Gray~~

~~STERCULIACEAE Cacao Family~~

- ~~*Fremontodendron californicum* (Torr.) Coville~ Flannel bush~~

Amaranthaceae Atriplex hymenelytra -Desert-holly

Amaryllidaceae Allium spp. that are not listed in Appendix A.(A)- Wild onion

Amaryllidaceae Habranthus longifolius - Plains Rain Lily

Amaryllidaceae Nothoscordum bivalve - Crowpoison

Anacardiaceae Rhus kearneyi ssp. *kearneyi* - Kearney Sumac

Apocynaceae Amsonia peeblesii - Peeble's Bluestar

Arecaceae Washingtonia filifera - California fan palm

Asparagaceae Agave spp. that are not listed in Appendix A.(A) - Agave, century plant

Asparagaceae Androstephium breviflorum - Funnel-lily

Asparagaceae Dasylirion wheeleri - Sotol, desert spoon

Asparagaceae Echeandia flavescens - Amberlily

Asparagaceae Eremocrinum albomarginatum - Lonely-lily

Asparagaceae Hesperocallis undulata - Ajo-lily

Asparagaceae Hesperoyucca newberryi - Newberry's-yucca

Asparagaceae Milla biflora - Mexican star

Asparagaceae Nolina spp. - Beargrass

Asparagaceae Polygonatum cobrense

Asparagaceae Triteleia lemmoniae - Oak Creek Triplet-lily

Asparagaceae Triteleiopsis palmeri - Palmer's Blue sand lily

Asparagaceae Yucca spp. that are not listed in Appendix A.(A) - Narrow-leaf yucca

Asteracea Cirsium virginensis - Virgin thistle

Asteraceae Erigeron anchana - Sierra Ancha fleabane

Asteraceae Erigeron heliographis - Heliograph Peak fleabane

Asteraceae Erigeron hodgsoniae - Hodgson's fleabane

Asteraceae Erigeron piscaticus - Fish Creek fleabane

Asteraceae Erigeron pringlei - Pringle's fleabane

Asteraceae Hymenoxys ambigens - Pinaleno Mountain Rubberweed

Asteraceae Perityle spp. except *emoryii* - Ajo rock daisy

Asteraceae Senecio quaerens - Gila groundsel

Asteraceae Tetraneuris verdiensis - Verde Valley four-nerved daisy

Boraginaceae Mertansia macdougalii - Macdougal's bluebells

Boraginaceae Phacelia sonoitensis - Sonoita Creek scorpionweed

Brassicaceae Draba asprella - Rough Whitlow-grass

Burseraceae Bursera microphylla - Elephant tree, torote

Cactaceae Carnegiea gigantea - Saguaro

Cactaceae Cochiemia spp. Biznaguita

Cactaceae Cylindropuntia spp. except listed in A - Cholla

Cactaceae Echinocereus spp. emoryii - Hedgehogs, claret-cup hedgehogs

Cactaceae Echinomastus spp. that are not listed in Appendix A.(A) - Fishhook cactus

Cactaceae Epithelantha micromeris - Pingpong ball cactus

Cactaceae Escobaria spp. that are not listed in Appendix A.(A) - Foxtail cactus

Cactaceae Ferocactus spp. - Barrel cactus, biznaga

Cactaceae Grusonia spp. - Devil-cholla

Cactaceae Homalocephala polycephala - Many-headed barrel cactus

Cactaceae Lophocereus schottii - Senita

Cactaceae Mammillaria heyderi - Heyder's pincushion cactus

Cactaceae Opuntia spp. - Prickly-pear

Cactaceae Pediocactus spp. except listed in A - Pincushion cactus, pediocactus

Cactaceae Peniocereus spp. - Queen-of-the-night cactus

Cactaceae Sclerocactus spp. except listed in A - Fishhook cactus

Cactaceae Stenocereus thurberi - Organpipe cactus

Campanulaceae Lobelia fenestralis - Fringeleaf lobelia

Campanulaceae Lobelia laxiflora - Sierra Madre lobelia

Caryophyllaceae Eremogone aberrans - Mt. Dellenbaugh Matted Sandwort

Cochlospermaceae Cochlospermum spp. - Saiya

Crassulaceae Dudleya spp. - Live-forever, echeveria

Crassulaceae Graptopetalum spp. - Leather-petals

Crassulaceae Sedum spp. - Stonecrop

Crossosomataceae Apacheria chiricauhensis - Apache-bush

Cucurbitaceae Tumamoca mcdougalii - Tumamoc globeberry

Euphorbiaceae Euphorbia aaron-rossii - Marble Canyon spurge

Euphorbiaceae Euphorbia plummerae - Huachuca Mountain spurge

Euphorbiaceae Pleradenophora bilocularis - Jumping Bean (es: hierba de la flecha)

Fabaceae Astragalus cobrensis var. *maguirei* - Maguire's milkvetch

Fabaceae Astragalus cremnophylax - Sentry milkvetch

Fabaceae Astragalus hypoxylus - Huachuca Mountain milkvetch

Fabaceae Astragalus lentiginosus var. *maricopae* - Maricopa milkvetch

Fabaceae Astragalus nutriosensis - Apache milkvetch

Fabaceae Astragalus xiphoides - Gladiator milkvetch

Fabaceae Cercis orbiculata - California redbud

Fabaceae Dermatophyllum arizonicum - Arizona Western mountain-laurel

Fabaceae Errazurizia rotundata - Roundleaf dunebroom

Fabaceae Olneya tesota - Ironwood, palo fierro

Fabaceae Pediomelum pauperitense

Fabaceae Phaseolus supinus - Supine bean

Fouqueriiaceae Fouquieria splendens - Ocotillo

Gentianaceae Gentianella wislizenii - Chiricahua Mountain dwarf gentian

Lamiaceae Hedeoma diffusa - Flagstaff mock pennyroyal

Lamiaceae Monardella arizonica - Arizona monardella

Lamiaceae Salvia dorrii ssp. *mearnsii* - Purple sage

Lamiaceae Scutellaria potosina var. *occidentalis* - Kaibab skullcap

Liliaceae Calochortus spp. - Mariposa-lily

Liliaceae Fritillaria atropurpurea - Spotted fritillary

Liliaceae Lilium spp. - Lemon lily

Liliaceae Prosartes trachycarpa - Roughfruit fairy-bells

Liliaceae Streptopus amplexifolius - Twisted stalk

Loasaceae Mentzelia longiloba - Blazing-star

Malvaceae Abutilon parishii - Tucson Indian-mallow

Malvaceae Fremontodendron californicum - Flannel bush

Malvaceae Pseudabutilon thurberi - Baboquivari Indian-mallow

Malvaceae Sphaeralcea rusbyi ssp. *gilensis* - Gila globe-mallow

Malvaceae Sphaeralcea gierischii - Gierisch's globe-mallow

Nyctaginaceae Boerhavia megaptera - Tucson Mountain spiderling

Onagraceae Camissonia confertiflora - Grand Canyon suncup

Onagraceae Chylismia exilis - Cottonwood Springs beeblossum

Orchidaceae all orchidaceae with exception of those that are listed in Appendix A.(A)

Papaveraceae Argemone arizonica - Grand Canyon prickle-poppy

Pinaceae Pinus aristata - Bristlecone pine

Plantaginaceae Mabrya acerifolia - Brittle-stem

Plantaginaceae Penstemon albomarginatus - Whitemargin beardtongue

Plantaginaceae Penstemon bicolor spp. roseus - Pinto beardtongue

Plantaginaceae Penstemon clutei - Sunset Crater beardtongue

Plantaginaceae Penstemon distans - Mt. Trumbull beardtongue

Plantaginaceae Penstemon linarioides ssp. *maguirei* - Maguire's beardtongue

Plantaginaceae Penstemon nudiflorus - Flagstaff beardtongue

Plantaginaceae Penstemon subulatus - Hackberry beardtongue

Poaceae Sporobolus interruptus - Black dropseed

Polemoniaceae Linanthus maricopensis - Maricopa linanthus

Polygalaceae Rhinotropis rusbyi - Rusby's desert milkwort

Polygonaceae Eriogonum heermannii var. *apachense* - Apache buckwheat

Polygonaceae Eriogonum capillare - San Carlos buckwheat

Polygonaceae Eriogonum ericifolium - Yavapai County buckwheat

Polygonaceae Eriogonum jonesii - Jones' buckwheat

Polygonaceae Eriogonum mortonianum - Fredonia buckwheat

Polygonaceae Eriogonum pulchrum - Yavapai County buckwheat

Polygonaceae Eriogonum ripleyi - Frazier's Well buckwheat

Polygonaceae Eriogonum terrenatum - San Pedro River buckwheat

Polygonaceae Eriogonum thompsonae var. *atwoodii* - Atwood's buckwheat

Portulaceae Lewisia spp. - Bitter-root

Portulaceae Phemeranthus spp. - Flameflower

Primulaceae Dodecatheon spp. - Shooting-star

Primulaceae Primula rusbyi - Rusby's primrose

Primulaceae Primula specuicola - Cave-dwelling primrose

Pteridaceae Astrolepis cochisensis subsp. *arizonica* - Arizona scaly cloakfern

Ranunculaceae Aquilegia spp. - Columbines

Rosaceae Potentilla albiflora - Pinaleno cinquefoil

Rosaceae Potentilla demotica - Hualapai cinquefoil

Rosaceae Potentilla rhyolitica - Santa Rita cinquefoil

Rosaceae Rosa stellata ssp. *abyssa* - Desert rose

Rosaceae Vauquelinia californica - Arizona rosewood

Rubiaceae Galium collomiae - Fossil Hill Creek bedstraw

Saxifragaceae Heuchera eastwoodiae - Senator Mine allum-root

Saxifragaceae Heuchera glomerulata - Chiricahua Mountain allum-root

Simaoubaceae Castela emoryi - Crucifixion-thorn, corona de cristo

Solanaceae Lycium spp. - Wolfberry, tomatillo

Solanaceae Capsicum annuum var. glabriusculum - Chiltepin

C. Salvage assessed native plants as prescribed in A.R.S. § 3-903(B)(3) that require a permit issued pursuant to this Article for removal:

~~BIGNONIACEAE Bignonia Family~~

- ~~*Chilopsis linearis* (Cav.) Sweet var. *arcuata* Fosberg–Desert-willow~~
- ~~*Chilopsis linearis* (Cav.) Sweet var. *glutinosa* (Engelm.) Fosberg~~

~~FABACEAE Pea Family [=Leguminosae]~~

- ~~*Cercidium floridum* Benth.–Blue palo verde~~
- ~~*Cercidium microphyllum* (Torr.) Rose & Johnst.–Foothill palo verde~~
- ~~*Olneya tesota* Gray–Desert ironwood~~
- ~~*Prosopis glandulosa* Torr. var. *glandulosa*–Honey mesquite~~
  ~~Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckll.~~
- ~~*Prosopis glandulosa* Torr. var. *torreyana* (Benson) M. C. Johnst.–Western honey mesquite~~
  ~~Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson~~
- ~~*Prosopis pubescens* Benth.–Screwbean mesquite~~
- ~~*Prosopis velutina* Woot.–Velvet mesquite~~
  ~~Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.~~
- ~~*Psorothamnus spinosus* (Gray) Barneby–Smoke tree.~~
  ~~Syn.: *Dalea spinosa* Gray~~

Bignoniaceae Chilopsis linearis - Desert willow

Fabaceae Parkinsonia florida - Blue palo verde

Fabaceae Parkinsonia microphylla - Foothill palo verde

Fabaceae Neltuma odorata - Texas Honey Mesquite

Fabaceae Strombocarpa pubescens - Screwbean mesquite

Fabaceae Neltuma velutina - Velvet mesquite

Fabaceae Psorothamnus spinosus - Smoke tree

D. Harvest restricted native plants as prescribed at A.R.S. § 3-903(B)(4) that require a permit issued pursuant to this Article, to cut or remove the plants for their by-products, fibers, or wood:

~~AGAVACEAE Agave Family (including Nolinaceae)~~

- ~~*Nolina bigelovii* (Torr.) Wats.–Bigelow's nolina~~
- ~~*Nolina microcarpa* Wats.–Beargrass, sacahuista~~
- ~~*Nolina parryi* Wats.–Parry's nolina~~

- ~~*Nolina texana* Wats. var. *compacta* (Trel.) Johnst.~~
  - ~~Bunchgrass~~
- ~~*Yucca baccata* Torr. var. *baccata*~~ Banana yucca
- ~~*Yucca schidigera* Roezl.~~ Mohave yucca, Spanish dagger

~~FABACEAE Pea Family [=Leguminosae]~~

- ~~*Olneya tesota* Gray~~ Desert ironwood
- ~~*Prosopis glandulosa* Torr. var. *glandulosa*~~ Honey mesquite

  ~~Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckll.~~
- ~~*Prosopis glandulosa* Torr. var. *torreyana* (Benson) M. C. Johnst.~~ Western honey mesquite

  ~~Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson~~
- ~~*Prosopis pubescens* Benth.~~ Screwbean mesquite
- ~~*Prosopis velutina* Woot.~~ Velvet mesquite

  ~~Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.~~

Asparagaceae Nolina spp. - Bear-grass

Fabaceae Neltuma odorata - Texas Honey Mesquite

Fabaceae Neltuma velutina - Velvet Mesquite

Fabaceae Psorothamnus spinosus - Smoketree

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

ARTICLE 11

Summary

As indicated in the Arizona Native Plant Act of 1989, the purpose of the rules codified in Article 11 are to: 1) Promote awareness and the uniqueness of the Arizona native plants and the potential for their preservation and salvage; 2) Encourage the salvage of Arizona native plants to the greatest extent feasible by preserving their existence through and after the process of real estate development; 3) Protect Arizona native plants from vandalism, theft, over depletion and unnecessary destruction; and 4) Promote the conservation of Arizona native plants. As authorized, pursuant to A.R.S. §§ 3-903, 3-905, and 3-912, this rulemaking is intended to identify Arizona native plants that are at risk of theft, vandalism, or depletion at varying degrees of severity. Then, provide a framework for salvaging those native plants that are growing wild on state land, state public land, or undeveloped private land that might otherwise be destroyed in development projects; are at risk or theft or vandalism; or have high intrinsic value.

This rulemaking is intended to modernize the rules with current industry practices; provide clarity on the native plant salvage process; update the list of protected native plants with the most current taxonomy and selection of plants to include on the list based on known information on risk and distribution of native plants; and make technical corrections throughout. It is also intended to reduce or ameliorate regulatory burdens on the public, while achieving the same regulatory objective as indicated in the Environmental Services Division's five-year rule review. Changes to these rules were proposed with the guidance of a formal rulemaking advisory committee that was officially formed on November 1, 2023. The seven-member committee was comprised of native plant salvage operators, native plant botanists, and land use managers. Additional input was also received from other subject matter experts. Public meetings were held regularly between November 15, 2023 and May 16, 2024 when formal recommendations were made, as summarized below.

The Department of Agriculture ("Department") anticipates the rulemaking will result in an overall benefit to the protection of Arizona native plants, to the regulated community, and the public. The Department bears minimal costs in implementing the proposed rule changes since the purpose of the amendments are intended to modernize existing rules, and not increase the regulatory burden. The Department has determined the rulemaking will not require any new full-time employees. The rulemaking could result in additional costs for the regulated community, but those costs are primarily associated to those that commit a violation of the rules of this Chapter and an increase of the cost from $25 to $50 to acquire all "Notices of Intent to Clear" as they are filed. Additionally, the fee for native plant education is increased from $10 to $50 for a native plant law education seminar and $25 to $65 for a court ordered native plant law education seminar. These increases are based on the increase in administrative costs since 2008. Changes may prove to benefit Arizona native plant salvage operations by providing a clearer information for land developers, property owners, State land managers, and other political subdivisions with state and private land when a protected native plant can be salvaged, instead of being destroyed. There will also be an additional saving to the regulated community by eliminating the requirement of the use of the $0.15 seal for Arizona protected native plants, since the associated protected native plant tag that is purchased, also serves the function of sealing the native plant cord. State land managers, will be effected by the rulemaking, in order to align with the changes to R3-3-1103. The State land managers and other political subdivisions, including HOAs, with state and private land will also incur minimal costs to educate staff and state land tenants of the changes to the rules. Counties, municipalities and HOA's that have similar native plant ordinances or codes will be directly affected by the rulemaking, but only to update those to align with the proposed changes and provide education and training for those affected, including staff and area residences and businesses. Beneficiaries of the rulemaking are land developers that allow salvage, salvage operators, and conservation groups as the rules clarify a good portion of what was already in the Native Plant Law to allow the salvage of protected native plants for sale, that would otherwise be destroyed in land development projects.

While there are minimal upfront costs associated with implementing and enforcing the new regulations, primarily the process of out-reach and education, the benefits of improved environmental protection, better resource management, and potential long-term savings can outweigh the initial costs.

1. **Identification of the proposed rulemaking.**

The explanation of changes are as follows:

R3-3-1101: The Department proposes to amend this rule by eliminating the unnecessary definitions for "Agent", "Department", "Landowner", "Noncommercial salvage permit", "Permittee", "Scientific permit" and "Wood receipt"; by adding new useful definitions for "Authorized representative", "Collection", "Highly safeguarded native plant", "Salvage", "Salvage assessed native plant", "Salvage restricted native plant".

An explanation of the jurisdiction of the Arizona native plant statutes and rules is also included here for clarification; and by clarifying the definitions of "Conservation" and "Destroy".

R3-3-1102: The Department proposes to amend the rule to include email address as part of the applicant information; clarifying when the time period begins to proceed with disposal of a native plant; clarify what is needed to obtain a copy of filed Notices of Intent to clear. Includes a change of the fee to be on the notification list from $25 to $50 to cover administrative costs, and clarifies when a notification of intent is not required.

R3-3-1103: The Department proposes several changes to this rule. The Department plans to incorporate language in subsection (A) from A.R.S. § 3-905(A) that refers to more than ¼ acre of land and a 60 day notice rather than just referring to the statute. The Department also plans to clarify the requirements for a state agency to allow the salvage protected native plants through the use of permits, tags and seals and the requirement that a person hold a scientific or non-commercial salvage permit for highly safeguarded native plants. The changes clarify the fee exemption for a state agency and the conditions for notification under an emergency where imminent threat to safety or property damage exists.

R3-3-1104: The Department proposes to amend this rule to prescribe the conditions that apply for each native plant permit. What information is required, when one is required, and conditions when one is not required. The Department proposes to move subsections (C) through (E) into rule R3-3-1106, as they relate to fees. The Department will only maintain the requirement to provide a social security number to the extent otherwise required by law. The rule will specifically state when an individual is obtaining the permit their social security number is required. The conditions for exemption from the rules are included for clarity.

R3-3-1105: The Department proposes to combine and rephrase subsections (A)(l) and (B)

(l). The Department proposes to move subsections (A)(2), (A)(4), (B)(2) and (B)(4) into rule R3-3-1104, focusing on permit application requirements and permit terms. The Department also proposes to add language to subsections (A)(3) and (B)(3) from A.R.S.§ 3-906(C) related to permit requirements for highly safeguarded native plants. Finally, the Department proposes to add a subsection to make clear that plants covered by a scientific or noncommercial salvage permit cannot be sold. The Department proposes to use this rule to detail the permit application requirements. The Department also plans to incorporate the requirement in A.R.S. § 3- 909(A) of a certificate of inspection for moving protected native plants out-of-state into this rule. The Department will only maintain the requirement to provide a social security number to the extent otherwise required by law. The rule will specifically state when an individual is obtaining the permit their social security number is required.

R3-3-1106: The Department proposes to rename and utilize the rule to prescribe fees for the permits, tags, and seals issued under the Article, including the fees for native plant law education incorporated from rule R3-3-1109. The fee attending a seminar is increased from $10 to $50 and from $25 to $65 for a court ordered native plant law seminar. This fee increase is to assist in covering the administrative costs associated to providing seminar training. No permit, tag, or seal fee increases.

R3-3-1107: The Department proposes to remove subsections (A) through (C) and incorporate the language into rule R3-3-1104 as it relates to native plant permits. Then utilize the rule to prescribe tag, seal and cord usage. The requirement for the usage of seals for Arizona protected native plants removed and only required for imported protected native plants. The current native plant tags used also serve the purpose of sealing the cord.

R3-3-1108: The Department proposes to change the reference to salvage restricted to salvage assessed. The Department also proposes to add to the recordkeeping requirements that the permittee must note the location where the plant was taken from and where it was replanted.

R3-3-1109: The Department proposes to repeal the rule and move the native plant law education fee requirements to rule R3-3-1106.

R3-3-1110: The Department proposes to make this rule more useful by include criteria for determining conditions that a permit could be denied and the process for an appeal.

Appendix A: The Department proposes to amend Appendix A, by input received from the scientific community and subject matter experts to ensure that the rule contains correct

taxonomy and plants are properly categorized based on current native plant status.

2. **Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.**

   The persons directly affected by the rulemaking in Article 11 are land developers, native plant salvage companies, State land managers, and other political subdivisions with state and private land. The proposed rulemaking will impose an additional cost by increasing the cost for requested and mandatory naive plant law education; and reduce a cost by eliminating the requirement for purchasing a native plant seal, based on current Department practices. The benefits of the rulemaking will outweigh the costs of those directly affected since the rulemaking will clarify the requirements for native plant salvage,

3. **A cost benefit analysis of the following:**

   (a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

   The effect of the rulemaking will not require any additional full-time employees to the Department and there will be no additional costs for the implementation of the rulemaking since the Department has already established a framework for the programs affected by the rulemaking.

   (b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

Other than the minimal costs associated to educating the public on changes made in the rulemaking, there are no additional identified costs or benefits to any political subdivision of the state.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

The rulemaking is not expected to effect revenues or payrolls for the regulated community. Businesses will benefit from the proposed changes throughout the rulemaking that align with current industry practices, and the rulemaking is intended to remove inconsistencies and reduce the overall regulatory burden. Businesses may benefit from the rulemaking in Article 11 with the clarification of the notice of intent to harvest process for native plant salvage operations and land developers. There will also be an additional saving to the regulated community by eliminating the requirement of the use of the $0.15 seal for Arizona protected native plants, since the associated protected native plant tag that is purchased, also serves the function of sealing the native plant cord.

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

It is not expected that employment in businesses, agencies, or political subdivisions will be directly affected by the rulemaking.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

Small businesses could include native plant salvage companies, native plant dealers, and land developers with fewer than 100 full-time employees.

(b) The administrative and other costs required for compliance with the proposed rule making.

Other than the minimal costs associated to educating employees on changes made in the rulemaking, it is expected that there will not be any additional administrative or other costs required for compliance associated with the proposed rulemaking since there is not a significant change in compliance requirements.

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

The Department finds that the use of any method in section 41-1035 is not feasible since establishing less stringent compliance or reporting requirements; establishing less stringent schedules or deadlines; consolidating compliance or reporting requirements; or exempting a small business would not comply with Arizona Native Plant laws (A.R.S. §§ 3-901 *et seq.* and 3-931 *et seq.*). Additionally, the rules in these Articles are intended to provide guidelines for the legal salvage of protected native plants, diminishing those requirements could result in the endangerment to Arizona protected native plants that could be vandalized. The use of performance standards is not applicable to this rulemaking.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

Private persons and consumers may benefit from the proposed rulemaking, as the changes clarify the native plant salvage process and will encourage land developers to salvage protected native plants and increasing consumer access to those plants that are salvaged. The proposed rulemaking does not infer any additional costs to private persons or consumers.

6. A statement of the probable effect on state revenues.

The proposed rulemaking will have minimal effect on state revenues since the increase to the native plant education fees are to cover the expense to provide education, and these programs are seldomly utilized. The $0.15 seal fee will be eliminated, but will not have a significant impact on state revenues. There is no other change to the native plant permit or tag fees; and there is no increase to the penalties for program violations.

7. **A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

   The Department finds there are no less intrusive or less costly alternatives to the proposed rulemaking while achieving the same regulatory purpose of the rules.

8. **A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**

   No data was produced from any studies or research for the rulemaking.

City of Phoenix
OFFICE OF ENVIRONMENTAL PROGRAMS

September 4, 2024

Mr. Brian McGrew
Program Manager
Arizona Department of Agriculture
1110 W Washington St., Suite 450
Phoenix, AZ 85007

Re: Notice of Proposed Rulemaking, Title 3, Chapter 3 Article 11 Arizona Native Plants

Dear Mr. McGrew:

Thank you for the opportunity to provide comment on the proposed rulemaking for Title 3, Chapter 3, Article 11 Arizona Native Plants. The City of Phoenix (Phoenix) has reviewed the changes and respectfully submits the following comments and recommendations.

1) The proposed rule includes ambiguous language related to timeframes that would make it difficult for a project proponent to know when their project can proceed after notification to the Arizona Department of Agriculture (Department). Phoenix recommends clarifying to reduce confusion and provide regulatory compliance certainty, as follows:

   - **R3-3-1102(B)(2) –** Recommend changing, "Notice is given to the Department within the following minimum time periods, <u>starting from the time the notice was given or from when confirmation is received from the department"</u>. As currently phrased, if the Department confirmation is not received on the same day as the notice, the landowner would not know when the activity impacting native plants would be allowed to proceed. Which would be the governing timeframe when they are different, as would be expected to happen regularly? The current language does not provide clarity on this. ***Phoenix recommends changing the language to: "… starting from the time the notice was given to the department."***

   - **R3-3-1103(B)(6) –** Recommend changing, "<u>In situations where 1 through 5 above are not possible, the destruction or clearing of the land may begin 60 days after the notice, as prescribed in subsection (A), has been acknowledged by the Department</u>". This language ties the state agency (including political subdivisions such as Phoenix) to an uncertain timeline based on when Department staff acknowledges receipt of the notice, rather than when the notice is submitted. The Department should be accountable for reviewing notices in a timely manner. As written, the rule language ignores that responsibility, thereby creating ambiguity for state agencies. This ambiguity can cause project delays and associated increased costs, resulting in an unnecessary waste of taxpayer and/or grant dollars. ***Phoenix urges the Department to revise the language to, "… the destruction or clearing of the land may begin 60 days after the notice, as prescribed in subsection (A), has been provided to the Department".*** This change in language

reflects both the Department's timely review responsibility and the responsibility of the state agency to submit the notice in the timeline required.

2) The timeframe of notification for the disposal and salvage of protected native plants by a state agency, including political subdivisions such as cities, is significantly more stringent than that required for private landowners, from a 30-day notification period for up to 40 acres for private landowners to a 60-day notification period for anything over 1/4-acre for state agencies. Phoenix recommends the Department work with the state legislature to reduce the notification timeframe required for state agencies to 30 days for up to 40 acres, congruent with private landowner requirements.

Thank you for the opportunity to provide comments. If you have any questions or would like to discuss these comments in more detail, please feel free to contact me at tricia.balluff@phoenix.gov or by phone at 602-534-1775.

Sincerely,

Tricia Balluff
Environmental Programs Manager

KATIE HOBBS
Governor

PAUL E. BRIERLEY
Director

Arizona Department of Agriculture

1110 W. Washington Street, Ste. 450, Phoenix, AZ 85007
P: (602) 542-0945 F: (602) 542-0898

September 6, 2024

Ms. Tricia Balluff
Environmental Programs Manager
City of Phoenix
200 W. Washington St., 14th Floor
Phoenix, Arizona 85003

RE: Notice of Proposed Rulemaking Public Comment Response, Arizona Native Plants

Dear Ms. Balluff:

Thank you for providing valuable comments on September 4, 2024 during the Department's public hearing for the notice of proposed rulemaking to amend the regulations under Arizona Administrative Code, Title 3, Chapter 3, Article 11 - Arizona Native Plants.

The Department has reviewed your two comments regarding ambiguous language related to timeframes in rules R3-4-1102(B)(2) and R3-3-1103(B)(6), on when a person, agency or political subdivision can proceed with a project after submitting proper notification. The Department concurs with the assessment and has made the changes as recommended. The Department believes this is not a substantive change, but clarifies ambiguous language and will benefit the regulated community overall. The change provided here will be updated in the rulemaking documents submitted to the Governor's Regulatory Review Council for review and decision.

R3-3-1102(B)(2) Notice is given to the Department within the following minimum time periods, <u>starting from the time the notice was given to the Department</u>:

R3-3-1103(B)(6) In situations where 1 through 5 above are not possible, the destruction or clearing of the land may begin 60 days after the notice, as prescribed in subsection (A), <u>has been provided to the Department.</u>

The Department has reviewed your comment regarding the sixty-day notification for the removal or destruction of native plants over one-quarter acre and the burden that it poses for state agencies and political subdivisions in comparison to what is required for a private landowner. Although this is consistent with what was adopted by the legislature in 1989, pursuant to Arizona Native Plant Law A.R.S. § 3-905(A),

thirty-five years have passed since and the pace in which development projects move is likely much quicker. We agree this could be overly burdensome, especially for smaller land clearing projects. Since we are the regulatory agency with oversight of the native plant laws, we cannot lobby for a change in this context. However, we are open to providing technical help with any legislation that is proposed.

If you have any questions or would like to discuss further, please let me know. I can be reached by phone at (602) 542-3228 or by emailing bmcgrew@azda.gov.

Sincerely,

Brian McGrew
Program Manager

cc: Jack Peterson, Assistant Director

CHAPTER 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

1. The Director shall use R3-3-1007 and R3-3-1008 to calculate an additional daily penalty for each unabated violation.
2. The additional daily penalty shall neither be less than the original penalty for the cited violation or exceed $1,000 per day per violation.
3. The additional daily penalty shall be multiplied by the number of calendar days the violation has continued unabated beyond the abatement period.

B. Notwithstanding subsection (A), the Director may reduce or eliminate the additional penalty based on:
1. The extent that the violation has been abated,
2. The cited person's good faith effort in correcting the violation, and
3. Whether the abatement has not been completed because of factors beyond the cited person's reasonable control.

Historical Note
Adopted effective October 8, 1998 (Supp. 98-4).
Amended by final rulemaking at 30 A.A.R. 89 (January 19, 2024), effective March 4, 2024 (Supp. 24-1).

R3-3-1011. Repeated or Willful Violations

A. The penalty for a repeated violation shall be calculated as follows:
1. The penalty for a repeated nonserious violation shall be doubled for the first repeated violation and tripled if the violation has been cited twice before.
2. The penalty for a repeated serious violation shall be multiplied five times for the first repeated violation and seven times if the violation has been cited twice before.
3. The penalty for a repeated serious violation in which someone is disabled or killed shall be multiplied 10 times for each repeated violation.
4. A repeated violation having no initial penalty shall be assessed for the first repeated violation as determined by this Article.
5. The penalty may be multiplied by 10, not to exceed the maximum penalty, if it is justified through appropriate documentation.

B. The Assistant Director may adjust the base penalty found under R3-3-1007(D) by a multiplier up to 10 for any willful violation.

C. The Assistant Director shall not use base adjustment factors in R3-3-1008 to reduce the penalty for any serious or nonserious willfully repeated violation.

D. Repeated violations are based on prior violations occurring within the previous three years.

E. The penalty for a repeated or willful violation shall not exceed $10,000.

Historical Note
Adopted effective October 8, 1998 (Supp. 98-4).
Amended by final rulemaking at 30 A.A.R. 89 (January 19, 2024), effective March 4, 2024 (Supp. 24-1).

R3-3-1012. Citation; Posting

An employer shall post a citation prescribed at A.R.S. § 3-3110(C) for three days or until the violation is abated, whichever time period is longer.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

ARTICLE 11. ARIZONA NATIVE PLANTS

R3-3-1101. Definitions

In addition to the definitions in A.R.S. § 3-901, the following terms apply to this Article:

"Agent" means a person authorized to manage, represent, and act for a landowner.

"Certificate of inspection for interstate shipments" means a certificate to transport protected native plants out of the state.

"Conservation" means prevention of exploitation, destruction, or neglect of native plants while helping to ensure continued public use.

"Cord" means a specific type string or small rope issued by the Department for attaching tags and seals to protected native plants.

"Cord of wood" means a measurement of firewood equal to 128 cubic feet.

"Department" means the Arizona Department of Agriculture.

"Destroy" means to cause the death of any protected native plant.

"Harvest restricted native plant permit" means a permit required to remove the by-products, fibers, or wood from a native plant listed in Appendix A, subsection (D).

"Landowner" means a person who holds title to a parcel of land.

"Noncommercial salvage permit" means a permit required for the noncommercial salvage of a highly safeguarded native plant.

"Original growing site" means a place where a plant is growing wild and is rooted to the ground or any property owned by the same landowner where a protected native plant is relocated or transplanted without an original transportation permit.

"Permittee" means any person who is issued a permit by the Department for removing and transporting protected native plants.

"Protected native plant" means any living plant or plant part listed in Appendix A and growing wild in Arizona.

"Protected native plant tag" means a tag issued by the Department to identify the lawful removal of a protected native plant, other than a saguaro cactus, from its original growing site.

"Saguaro tag" means a tag issued by the Department to identify a saguaro cactus being lawfully moved.

"Salvage assessed native plant permit" means a permit required to remove a native plant listed in Appendix A, subsection (C).

"Salvage restricted native plant permit" means a permit required to remove a native plant listed in Appendix A, subsection (B).

"Scientific permit" means a permit required to remove a native plant for a controlled experimental project by a qualified person.

"Securely tie" means to fasten in a tight and secure manner to prevent the removal of tags, seals, or cord for reuse.

"Small Native Plant" means any protected plant eight inches in height or less.

"Survey" means the process by which a parcel of land is examined for the presence of protected native plants. A simple survey determines only whether protected native plants are present. A complete survey establishes the kind and number of each species present.

"Wood receipt" means a receipt issued by the Department to identify the lawful removal of a protected native plant harvested for fuel, being removed from its original growing site.

Historical Note

New Section recodified from R3-4-601 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1102. Protected Native Plant Destruction by a Private Landowner

A. Notice of intent.
1. Before a protected native plant is destroyed, the private landowner shall provide the following information to the Department on a form obtained from the Department:
   a. Name, address, and telephone number of the landowner;
   b. Name, address, and telephone number of the landowner's agent, if applicable;
   c. Valid documentation indicating land ownership, including but not limited to a parcel identification number, tax assessment, or deed;
   d. Legal description, map, address, or other description of the area, including the number of acres to be cleared, in which the protected native plants subject to the destruction are located;
   e. Earliest date of plant destruction; and
   f. Landowner's intent for the disposal or salvage of protected native plants on the land.
2. A landowner intending to destroy protected native plants on an area of less than one acre may submit the information required in subsection (A)(1) to the Department verbally.

B. A landowner shall not destroy a protected native plant until:
1. The landowner receives a written confirmation notice from the Department, and
2. Notice is given to the Department within the following minimum time periods:
   a. Twenty days before the plants are destroyed over an area of less than one acre.
   b. Thirty days before the plants are destroyed over an area of one acre or more but less than 40 acres.
   c. Sixty days before the plants are destroyed over an area of 40 acres or more.

C. The Department shall provide a salvage operator or other interested person with a copy of a notice of intent submitted under this Section upon receipt of the private landowner's name, address, telephone number, and payment of an annual $25 nonrefundable fee.

Historical Note

New Section recodified from R3-4-602 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1103. Disposal and Salvage of Protected Native Plants by a State Agency

A. A state agency intending to remove or destroy protected native plants shall notify the Department, under A.R.S. § 3-905, and shall propose a method of disposal from the following list:
1. The plants may be sold at a public auction;
2. The plants may be relocated or transported to a different location on the same property or to another property owned by the state, without obtaining a permit;
3. The plants may be donated to nonprofit organizations as provided in A.R.S. § 3-916;
4. The plants may be donated to another state agency or political subdivision, without obtaining a permit; or
5. The plants may be salvaged or harvested by a member of the general public or a commercial dealer, if the person holds a permit as provided under A.R.S. § 3-906 or 3-907.

B. If the plants are highly safeguarded native plants, they shall first be made available to the holder of a scientific permit or a noncommercial salvage permit.

Historical Note

New Section recodified from R3-4-603 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1104. Protected Native Plant Permits; Tags; Seals; Fees

A. A person shall not collect, transport, possess, sell, offer for sale, dispose, or salvage protected native plants unless that person is 18 years of age or older and possesses an appropriate permit.

B. An applicant shall submit the following information to the Department on a form obtained from the Department, as applicable:
1. Name, business name, address, telephone number, Social Security number or tax identification number, and signature of the applicant;
2. Name and number of plants to be removed;
3. Purpose of the plant removal;
4. Whether the applicant has a conviction for a violation of a state or federal statute regarding the protection of native plants within the previous five years;
5. Except for salvage assessed native plants;
   a. Name, address, telephone number, and signature of the landowner;
   b. Location of the permitted site and size of acreage;
   c. Destination address where the plants will be transplanted;
   d. Legal and physical description of the location of the original growing site; and
   e. Parcel identification number for the permitted site or other documents proving land ownership.

C. Permit fees.
1. A person removing and transporting protected native plants shall submit the following applicable fee to the Department with the permit application:
   a. Salvage assessed native plant permit, annual use, $35;
   b. Harvest restricted native plant permit, annual use, $35;
   c. All other native plant permits, one-time use, $7;
   d. Certificate of inspection for interstate shipments, $15.
2. Exemptions. Protected native plants are exempt from fees if:

a. The protected native plants intended for personal use by a landowner are taken from one piece of land owned by the landowner to another piece of land also owned by the landowner, remain on the property of the landowner, and are not sold or offered for sale;
b. The protected native plants are collected for scientific purposes; or
c. A landowner donates the protected native plant to a scientific, educational, or charitable institution.

D. Tag and harvesting fees.
1. Any person obtaining a saguaro tag or other protected native plant tag or receipt shall submit the following applicable fee to the Department at the time a tag is obtained:
   a. Saguaro, $8 per plant;
   b. Trees cut for firewood and listed in the harvest restricted category, $6 per cord of wood;
   c. Small native plant, $.50 per plant;
   d. Any other protected native plant referenced in A.R.S. § 3-903(B) and (C) and listed in Appendix A, $6 per plant.
2. The fee for harvesting *nolina* or *yucca* parts is $6 per ton. Payment shall be made to the Department in the following manner:
   a. Unprocessed nolina or yucca fiber shall be weighed on a state-certified bonded scale; and
   b. The harvester shall submit payment and weight certificates to the Department no later than the tenth day of the month following each harvest.

E. Seal fees. A person obtaining a seal shall submit a $.15 per plant fee to the Department at the time a seal is obtained.

F. Salvage assessed native plant permits and plant tags are valid for the calendar year in which they are issued. The tags expire at the end of the calendar year unless the permit is renewed.

Historical Note

New Section recodified from R3-4-604 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1105. Scientific Permits; Noncommercial Salvage Permits

A. Scientific Permit
1. A person shall not collect any highly safeguarded or other protected native plants for a research project unless that person holds a scientific permit.
2. An applicant shall submit the following information to the Department on a form obtained from the Department:
   a. Name, address, and telephone number of the company or research facility applying for the permit;
   b. Name, title and experience of the person conducting the research project;
   c. Purpose and intent of the research project;
   d. Controls to be used;
   e. Variables to be considered;
   f. Time-frame for the project;
   g. Anticipated results and plans for publication;
   h. Reports and recordkeeping that will be used to monitor the project;
   i. Project funding source;
   j. Funding of the company or research facility;
   k. Written authorization from the landowner for collection of the plants;
   l. Date of the application;
   m. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests; and
   n. Tax identification number, or if applicant is an individual, a Social Security number.
3. A scientific permit shall be issued if the applicant provides documentation that demonstrates the following:
   a. A plan, pre-approved by the landowner, to restore the removal site to a natural appearance;
   b. The removal and movement of the native plants shall be accomplished by a person experienced in native plant removal and transplantation;
   c. The native plants used in the project shall remain accessible to the Department;
   d. The ecology of the project site is beneficial to the growth of the specific plants in the project if practical;
   e. Arrangements exist for a suitable permanent planting site for the surviving plants after the project's completion; and
   f. Description of plant disposition and research hypothesis.
4. A scientific permit is valid for the calendar year in which it is issued.

B. Noncommercial salvage permit:
1. Highly safeguarded native plants may only be collected for conservation by a person holding a noncommercial salvage permit.
2. An applicant shall submit the following information to the Department, on a form obtained from the Department:
   a. Name, address, and telephone number of the applicant applying for the permit;
   b. Proposed relocation site for the plants;
   c. Written authorization from the landowner for collection of the plants;
   d. Date of the application; and
   e. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests.
3. A noncommercial salvage permit shall be issued if all of the following conditions are met through documentation provided to the Department:
   a. The native plants used in the project shall be accessible to the Department after transplant, and
   b. The relocation site is beneficial to the growth of the specific plants in the project.
4. A noncommercial salvage permit is valid only for the transportation and the transplantation of the particular native plant.

Historical Note

New Section recodified from R3-4-605 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1106. Protected Native Plant Survey; Fee

A. Upon request, the Department may conduct a native plant survey. Upon completion, the Department shall notify the individual who made the request of:
1. The date the survey was performed;
2. The amount of the survey fee payable to the Department;
3. The name of Department personnel performing the survey;

4. Upon payment, the survey results including the names and numbers of protected native plants.

B. A person who requests a native plant survey shall pay the survey fee to the Department within 30 days from the date of the notification. The survey fee shall be based on time and travel expenses, except that no fee shall be charged for a determination of whether protected species exist on the land.

Historical Note

New Section recodified from R3-4-606 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1107. Movement Permits; Tags, Seals, and Cord Use

A. Any person moving a protected native plant, except a saguaro cactus, previously transplanted from its original growing site in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the plant is being moved shall provide the following information on the permit application:

1. The name, telephone number, and signature of the landowner;
2. The location of the plant;
3. The name, address, and telephone number of the receiver;
4. The name, address, and telephone number of the carrier;
5. The number, species, and description of the plant being removed;
6. The tax parcel identification number; and
7. The date of the application.

B. Any person moving a saguaro cactus over four feet tall previously transplanted from its original growing site in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the saguaro cactus is being moved shall provide the following information on the permit application, unless the applicant maintains a record of the original permit or verifies the Department has a record of a previous legal movement of the cactus by the applicant.

1. The name, telephone number, and signature of the landowner;
2. The address where the saguaro cactus is located;
3. The name, address, and telephone number of the receiver;
4. The name, address, and telephone number of the carrier;
5. The number, species, and description of the plant being removed;
6. The tax parcel identification number of the property where the saguaro cactus is being moved; and
7. The date of the application.

C. Movement of protected native plants obtained outside Arizona.

1. Any person moving a protected native plant obtained outside Arizona and transporting and planting it within the state shall declare the protected native plant at the agricultural inspection station nearest the port of entry. The Department shall place the protected native plant under "Warning Hold" to the nearest permitting office.
2. If an agricultural station is not in operation at the port of entry, the person shall declare the protected native plant at the nearest permitting office during normal office hours.
3. After the plants have been declared, the permitting office shall issue a Movement Permit and seal.

D. Any person moving protected native plants shall obtain the following seals from the Department and securely attach the appropriate seal to each protected native plant:

1. Protected native plant seals identify protected native plants, except saguaro cacti, that will be moved from locations that are not the original growing sites.
2. Imported seals identify all imported protected native plants.

E. Tag, seal, and cord attachment.

1. A permittee shall attach a tag to each protected native plant taken from its original growing site, using cord provided by the Department, before transport. No other type of rope, string, twine, or wire is allowed.
2. The cord shall be securely tied around the plant, and the tag attached so that it cannot be removed without breaking the seal or cutting the cord.
3. The tag shall be placed directly over the knot in the cord and the ends pressed firmly together sealing the knot so that it cannot be removed for reuse.
4. The protected native plant seal shall be placed directly over the knot and snapped firmly closed, sealing the knot.
5. The imported seal shall be attached directly to the plant.
6. Upon loading the plant, every effort shall be made to allow visibility of the tag during transport.

Historical Note

New Section recodified from R3-4-607 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1108. Recordkeeping; Salvage Assessed and Harvest Restricted Native Plants

A. Salvage Assessed Native Plants.

1. A permittee shall maintain a record of each protected native plant removed under an annual permit for two years from the date of each transaction and allow Department inspection of the records during normal business hours. The transaction record shall include the date salvage restricted protected native plants were removed and the permit and tag numbers.
2. Annually, by January 31, a permittee shall submit to the Department a copy of each transaction record for the prior calendar year.

B. Harvest Restricted Native Plants. A permittee shall submit to the Department by the tenth day of each month the transaction records for the previous month, or a written statement that no transactions were conducted for that month.

Historical Note

New Section recodified from R3-4-608 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1109. Arizona Native Plant Law Education

A. The Department may schedule seminars and training courses on an as-needed basis.

B. In addition to the following fees, charges for printed materials or pamphlets shall be assessed based upon printing and mailing costs:

1. A person attending a seminar or training course on Arizona native plant law shall pay a nonrefundable fee of $10 to the Department before attending the class.
2. A person convicted of violating Arizona native plant laws and ordered by a court to attend a native plant educational

class shall pay a nonrefundable fee of $25 to the Department before attending the class. The Department shall provide written confirmation of satisfactory completion to a person ordered by a court to attend a class.

Historical Note

New Section recodified from R3-4-609 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1110. Permit Denial

Upon notice of denial of a permit, an applicant may request, in writing, that the Department provide an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10, to appeal the denial.

Historical Note

New Section recodified from R3-4-610 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

R3-3-1111. Repealed

Historical Note

New Section recodified from R3-4-611 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Repealed by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

Appendix A. Protected Native Plants by Category

A. Highly safeguarded native plants as prescribed in A.R.S. § 3-903(B)(1), for which removal is not allowed except as provided in R3-3-1105:

AGAVACEAE Agave Family

Agave arizonica Gentry & Weber–Arizona agave

Agave delamateri Hodgson & Slauson

Agave murpheyi Gibson–Hohokam agave

Agave parviflora Torr.–Santa Cruz striped agave, Small-flowered agave

Agave phillipsiana Hodgson

Agave schottii Engelm. var. *treleasei* (Toumey) Kearney & Peebles

APIACEAE Parsley Family. [= Umbelliferae]

Lilaeopsis schaffneriana (Schlecht.) Coult. & Rose ssp. *recurva* (A. W. Hill) Affolter–Cienega false rush, Huachuca water umbel.
Syn.: *Lilaeopsis recurva* A. W. Hill

APOCYNACEAE Dogbane Family

Amsonia kearneyana Woods.–Kearney's bluestar

Cycladenia humilis Benth. var. *jonesii* (Eastw.) Welsh & Atwood–Jones' cycladenia

ASCLEPIADACEAE Milkweed Family

Asclepias welshii N. & P. Holmgren–Welsh's milkweed

ASTERACEAE Sunflower Family [= Compositae]

Erigeron lemmonii Gray–Lemmon fleabane

Erigeron rhizomatus Cronquist–Zuni fleabane

Senecio franciscanus Greene–San Francisco Peaks groundsel

Senecio huachucanus Gray–Huachuca groundsel

BURSERACEAE Torch Wood Family

Bursera fagaroides (H.B.K.) Engler–Fragrant bursera

CACTACEAE Cactus Family

Carnegiea gigantea (Engelm.) Britt. & Rose–Saguaro: 'Crested' or 'Fan-top' form
Syn.: *Cereus giganteus* Engelm.

Coryphantha recurvata (Engelm.) Britt. & Rose–Golden-chested beehive cactus
Syn.: *Mammillaria recurvata* Engelm.

Coryphantha robbinsorum (W. H. Earle) A. Zimmerman–Cochise pincushion cactus, Robbin's cory cactus.
Syn.: *Cochiseia robbinsorum* W.H. Earle

Coryphantha scheeri (Kuntze) L. Benson var. *robustispina* (Schott) L. Benson–Scheer's strong-spined cory cactus.
Syn.: *Mammillaria robustispina* Schott

Echinocactus horizonthalonius Lemaire var. *nicholii* L. Benson–Nichol's Turk's head cactus

Echinocereus triglochidiatus Engelm. var. *arizonicus* (Rose ex Orcutt) L. Benson–Arizona hedgehog cactus

Echinomastus erectocentrus (Coult.) Britt. & Rose var. *acunensis* (W.T. Marshall) L.Benson–Acuna cactus
Syn.: *Neolloydia erectocentra* (Coult.) L. Benson var. *acunensis* (W. T. Marshall) L. Benson

Pediocactus bradyi L. Benson–Brady's pincushion cactus

Pediocactus paradinei B. W. Benson–Paradine plains cactus

Pediocactus peeblesianus (Croizat) L. Benson var. *fickeiseniae* L. Benson

Pediocactus peeblesianus (Croizat) L. Benson var. *peeblesianus* Peebles' Navajo cactus, Navajo plains cactus
Syn.: *Navajoa peeblesiana* Croizat

Pediocactus sileri (Engelm.) L. Benson–Siler pincushion cactus
Syn.: *Utahia sileri* (Engelm.) Britt. & Rose

COCHLOSPERMACEAE Cochlospermum Family

Amoreuxia gonzalezii Sprague & Riley

CYPERACEAE Sedge Family

Carex specuicola J. T. Howell–Navajo sedge

FABACEAE Pea Family [=Leguminosae]

Astragalus cremnophylax Barneby var. *cremnophylax* Sentry milk vetch

Astragalus holmgreniorum Barneby–Holmgren milk-vetch

Dalea tentaculoides Gentry–Gentry indigo bush

LENNOACEAE Lennoa Family

Pholisma arenarium Nutt.–Scaly-stemmed sand plant

Pholisma sonorae (Torr. ex Gray) Yatskievych–Sandfood, sandroot
Syn.: *Ammobroma sonorae* Torr. ex Gray

LILIACEAE Lily Family
Allium gooddingii Ownbey–Goodding's onion

ORCHIDACEAE Orchid Family

Cypripedium calceolus L. var. *pubescens* (Willd.) Correll–Yellow lady's slipper

Hexalectris warnockii Ames & Correll–Texas purple spike

Spiranthes delitescens C. Sheviak

POACEAE Grass Family [=Gramineae]
Puccinellia parishii A.S. Hitchc.–Parish alkali grass

POLYGONACEAE Buckwheat Family
Rumex orthoneurus Rech. f.

PSILOTACEAE Psilotum Family
Psilotum nudum (L.) Beauv. Bush Moss, Whisk Ferm

RANUNCULACEAE Buttercup Family

Cimicifuga arizonica Wats.–Arizona bugbane

Clematis hirsutissima Pursh var. *arizonica* (Heller) Erickson–Arizona leatherflower

ROSACEAE Rose Family

Purshia subintegra (Kearney) J. Hendrickson–Arizona cliffrose, Burro Creek cliffrose
Syn.: *Cowania subintegra* Kearney

SALICACEAE Willow Family
Salix arizonica Dorn–Arizona willow

SCROPHULARIACEAE Figwort Family
Penstemon discolor Keck–Variegated beardtongue

B. Salvage restricted native plants as prescribed in A.R.S. § 3-903(B)(2) that require a permit for removal. In addition to the plants listed under Agavaceae, Cactaceae, Liliaceae, and Orchidaceae, all other species in these families are salvage restricted protected native plants:

AGAVACEAE Agave Family
Agave chrysantha Peebles

Agave deserti Engelm. ssp. *simplex* Gentry–Desert agave

Agave mckelveyana Gentry

Agave palmeri Engelm.

Agave parryi Engelm. var. *couseii* (Engelm. ex Trel.) Kearney & Peebles

Agave parryi Engelm. var. *huachucensis* (Baker) Little ex L. Benson
Syn.: *Agave huachucensis* Baker

Agave parryi Engelm. var. *parryi*

Agave schottii Engelm. var. *schottii* – Shindigger

Agave toumeyana Trel. ssp. *bella* (Breitung) Gentry

Agave toumeyana Trel. ssp. *toumeyana*

Agave utahensis Engelm. spp. *kaibabensis* (McKelvey) Gentry
Syn.: *Agave kaibabensis* McKelvey

Agave utahensis Engelm. var. *utahensis*

Yucca angustissima Engelm. var. *angustissima*

Yucca angustissima Engelm. var. *kanabensis* (McKelvey) Reveal
Syn.: *Yucca kanabensis* McKelvey

Yucca arizonica McKelvey

Yucca baccata Torr. var. *baccata*–Banana yucca

Yucca baccata Torr. var. *vespertina* McKelvey

Yucca baileyi Woot. & Standl. var. *intermedia* (McKelvey) Reveal
Syn.: *Yucca navajoa* Webber

Yucca brevifolia Engelm. var. *brevifolia*–Joshua tree

Yucca brevifolia Engelm. var. *jaegeriana* McKelvey

Yucca elata Engelm. var. *elata*–Soaptree yucca, palmilla

Yucca elata Engelm var. *utahensis* (McKelvey) Reveal
Syn.: *Yucca utahensis* McKelvey

Yucca elata Engelm. var. *verdiensis* (McKelvey) Reveal
Syn.: *Yucca verdiensis* McKelvey

Yucca harrimaniae Trel.

Yucca schidigera Roezl.–Mohave yucca, Spanish dagger

Yucca schottii Engelm.–Hairy yucca

Yucca thornberi McKelvey
Yucca whipplei Torr. var. *whipplei*–Our Lord's candle
Syn.: *Yucca newberryi* McKelvey

AMARYLLIDACEAE Amaryllis Family
Zephyranthes longifolia Hemsl.–Plains Rain Lily

ANACARDIACEAE Sumac Family
Rhus kearneyi Barkley–Kearney Sumac

ARECACEAE Palm Family [=Palmae]
Washingtonia filifera (Linden ex Andre) H. Wendl–California fan palm

ASTERACEAE Sunflower Family [=Compositae]

Cirsium parryi (Gray) Petrak ssp. *mogollonicum* Schaak

Cirsium virginensis Welsh–Virgin thistle

Erigeron kuschei Eastw.–Chiricahua fleabane

Erigeron piscaticus Nesom–Fish Creek fleabane

Flaveria macdougalii Theroux, Pinkava & Keil

Perityle ajoensis Todson–Ajo rock daisy

Perityle cochisensis (Niles) Powell–Chiricahua rock daisy

Senecio quaerens Greene–Gila groundsel

BURSERACEAE Torch-Wood Family
Bursera microphylla Gray–Elephant tree, torote

CACTACEAE Cactus Family

Carnegiea gigantea (Engelm.) Britt. & Rose–Saguaro
Syn.: *Cereus giganteus* Engelm.

Coryphantha missouriensis (Sweet) Britt. & Rose

Coryphantha missouriensis (Sweet) Britt. & Rose var. *marstonii* (Clover) L. Benson

Coryphantha scheeri (Kuntze) L. Benson var. *valida* (Engelm.) L. Benson

Coryphantha strobiliformis (Poselger) var. *orcuttii* (Rose) L. Benson

Coryphantha strobiliformis (Poselger) var. *strobiliformis*

Coryphantha vivipara (Nutt.) Britt. & Rose var. *alversonii* (Coult.) L. Benson

Coryphantha vivipara (Nutt.) Britt. & Rose var. *arizonica* (Engelm.) W. T. Marshall
Syn.: *Mammillaria arizonica* Engelm.

Coryphantha vivipara (Nutt.) Britt. & Rose var. *bisbeeana* (Orcutt) L. Benson

Coryphantha vivipara (Nutt.) Britt. & Rose var. *deserti* (Engelm.) W. T. Marshall
Syn.: *Mammillaria chlorantha* Engelm.

Coryphantha vivipara (Nutt.) Britt. & Rose var. *rosea* (Clokey) L. Benson

Echinocactus polycephalus Engelm. & Bigel. var. *polycephalus*

Echinocactus polycephalus Engelm. & Bigel. var. *xeranthemoides* Engelm. ex Coult.
Syn.: *Echinocactus xeranthemoides* Engelm. ex Coult.

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. *acicularis* L. Benson

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. *armatus* L. Benson

Echinocereus engelmannii (Parry ex Engelm.) Lemaire var. *chrysocentrus* L. Benson

Echinocereus engelmannii (Parry ex. Engelm.) Lemaire var. *engelmannii*

Echinocereus engelmannii (Parry) Lemaire var. *variegatus* (Engelm.) Engelm. ex Rümpler

Echinocereus fasciculatus (Engelm. ex B. D. Jackson) L. Benson var. fasciculatus
Syn.: *Echinocereus fendleri* (Engelm.) Rümpler var. *fasciculatus* (Engelm. ex B. D. Jackson) N. P. Taylor, *Echinocereus fendleri* (Engelm.) Rümpler var. *robusta* L. Benson; *Mammillaria fasciculata* Engelm.

Echinocereus fasciculatus (Engelm. ex B. D. Jackson) L. Benson var. *bonkerae* (Thornber & Bonker) L. Benson.
Syn.: *Echinocereus boyce-thompsonii* Orcutt var. *bonkerae* Peebles; *Echinocereus fendleri* (Engelm.) Rümpler var. *bonkerae* (Thornber & Bonker) L. Benson

Echinocereus fasciculatus (Engelm. ex B. D. Jackson) L. Benson var. *boyce-thompsonii* (Orcutt) L. Benson
Syn.: *Echinocereus boyce-thompsonii* Orcutt

Echinocereus fendleri (Engelm.) Rümpler var. *boyce-thompsonii* (Orcutt) L. Benson

Echinocereus fendleri (Engelm.) Rümpler var. *fendleri*

Echinocereus fendleri (Engelm.) Rümpler var. *rectispinus* (Peebles) L. Benson

Echinocereus ledingii Peebles

Echinocereus nicholii (L. Benson) Parfitt.
Syn.: *Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *nicholii* L. Benson

Echinocereus pectinatus (Scheidw.) Engelm. var. *dasyacanthus* (Engelm.) N. P. Taylor
Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *neomexicanus* (Coult.) L. Benson

Echinocereus polyacanthus Engelm. (1848) var. *polyacanthus*

Echinocereus pseudopectinatus (N. P. Taylor) N. P. Taylor
Syn.: *Echinocereus bristolii* W. T. Marshall var. *pseudopectinatus* N. P. Taylor, *Echinocereus pectinatus* (Scheidw.) Engelm. var. *pectinatus sensu* Kearney and Peebles, Arizona Flora, and L. Benson, The Cacti of Arizona and The Cacti of the United States and Canada.

Echinocereus rigidissimus (Engelm.) Hort. F. A. Haage.
Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *rigidissimus* (Engelm.) Engelm. ex Rümpler–Rainbow cactus

Echinocereus triglochidiatus Engelm. var. *gonacanthus* (Engelm. & Bigel.) Boiss.

Echinocereus triglochidiatus Engelm. var. *melanacanthus* (Engelm.) L. Benson
Syn.: *Mammillaria aggregata* Engelm.

Echinocereus triglochidiatus Engelm. var. *mojavensis* (Engelm.) L. Benson

Echinocereus triglochidiatus Engelm. var. *neomexicanus* (Standl.) Standl. ex W. T. Marshall.
Syn.: *Echinocereus triglochidiatus* Engelm. var. *polyacanthus* (Engelm. 1859 non 1848) L. Benson

Echinocereus triglochidiatus Engelm. var. *triglochidiatus*

Echinomastus erectocentrus (Coult.) Britt. & Rose var. *erectocentrus*
Syn.: *Neolloydia erectocentra* (Coult.) L. Benson var. *erectocentra*

Echinomastus intertextus (Engelm.) Britt. & Rose
Syn.: *Neolloydia intertexta* (Engelg.) L. Benson

Echinomastus johnsonii (Parry) Baxter–Beehive cactus
Syn.: *Neolloydia johnsonii* (Parry) L. Benson

Epithelantha micromeris (Engelm.) Weber ex Britt. & Rose

Ferocactus cylindraceus (Engelm.) Orcutt var. *cylindraceus*–Barrel cactus
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *acanthodes*

Ferocactus cylindraceus (Engelm.) Orcutt var. *eastwoodiae* (Engelm.) N. P. Taylor

Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *eastwoodiae* L. Benson; Ferocactus eastwoodiae (L. Benson) L. Benson

Ferocactus cylindraceus (Engelm.) Orcutt. var. *lecontei* (Engelm.) H. Bravo
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *leconti* (Engelm.) Lindsay; *Ferocactus lecontei* (Engelm.) Britt. & Rose

Ferocactus emoryi (Engelm.) Orcutt–Barrel cactus
Syn.: *Ferocactus covillei* Britt. & Rose

Ferocactus wislizenii (Engelm.) Britt. & Rose–Barrel cactus

Lophocereus schottii (Engelm.) Britt. & Rose–Senita

Mammillaria grahamii Engelm. var. *grahamii*

Mammillaria grahamii Engelm. var. *oliviae* (Orcutt) L. Benson
Syn.: *Mammillaria oliviae* Orcutt

Mammillaria heyderi Mühlenpf. var. *heyderi*
Syn.: *Mammillaria gummifera* Engelm. var. *applanata* (Engelm.) L. Benson

Mammillaria heyderi Mühlenpf. var. *macdougalii* (Rose) L. Benson
Syn.: *Mammillaria gummifera* Engelm. var. *macdougalii* (Rose) L. Benson; *Mammillaria macdougalii* Rose

Mammillaria heyderi Mühlenpf. var. *meiacantha* (Engelm.) L. Benson
Syn.: *Mammillaria gummifera* Engelm. var. *meiacantha* (Engelm.) L. Benson

Mammillaria lasiacantha Engelm.

Mammillaria mainiae K. Brand.

Mammillaria microcarpa Engelm.

Mammillaria tetrancistra Engelm.

Mammillaria thornberi Orcutt

Mammillaria viridiflora (Britt. & Rose) Bödeker.
Syn.: *Mammillaria orestra* L. Benson

Mammillaria wrightii Engelm. var. *wilcoxii* (Toumey ex K. Schumann) W. T. Marshall
Syn.: *Mammillaria wilcoxii* Toumey

Mammillaria wrightii Engelm. var. *wrightii*

Opuntia acanthocarpa Engelm. & Bigel. var. *acanthocarpa*–Buckhorn cholla

Opuntia acanthocarpa Engelm. & Bigel. var. *coloradensis* L. Benson

Opuntia acanthocarpa Engelm. & Bigel. var. *major* L. Benson
Syn.: *Opuntia acanthocarpa* Engelm. & Bigel var. *ramosa* Peebles

Opuntia acanthocarpa Engelm. & Bigel. var. *thornberi* (Thornber & Bonker) L. Benson
Syn.: *Opuntia thornberi* Thornber & Bonker

Opuntia arbuscula Engelm.–Pencil cholla

Opuntia basilaris Engelm. & Bigel. var. *aurea* (Baxter) W. T. Marshall–Yellow beavertail
Syn.: *Opuntia aurea* Baxter

Opuntia basilaris Engelm. & Bigel. var. *basilaris*–Beavertail cactus

Opuntia basilaris Engelm. & Bigel. var. *longiareolata* (Clover & Jotter) L. Benson

Opuntia basilaris Engelm. & Bigel. var. *treleasei* (Coult.) Toumey

Opuntia bigelovii Engelm.–Teddy-bear cholla

Opuntia campii ined.

Opuntia canada Griffiths (*O. phaeacantha* Engelm. var. *laevis X major* and *O. gilvescens* Griffiths).

Opuntia chlorotica Engelm. & Bigel.–Pancake prickly-pear

Opuntia clavata Engelm.–Club cholla

Opuntia curvospina Griffiths

Opuntia echinocarpa Engelm. & Bigel–Silver cholla

Opuntia emoryi Engelm.–Devil cholla
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *stanlyi*

Opuntia engelmannii Salm-Dyck ex Engelm. var. *engelmannii*–Engelmann's prickly-pear
Syn.: *Opuntia phaeacantha* Engelm. var. *discata* (Griffiths) Benson & Walkington

Opuntia engelmannii Salm-Dyck ex Engelm. var. *flavospina* (L.Benson) Parfitt & Pinkava
Syn.: *Opuntia phaeacantha* Engelm. var. *flavispina* L. Benson

Opuntia erinacea Engelm. & Bigel. var. *erinacea*–Mohave prickly-pear

Opuntia erinacea Engelm. & Bigel. var. *hystricina* (Engelm. & Bigel.) L. Benson
Syn.: *Opuntia hystricina* Engelm. & Bigel.

Opuntia erinacea Engelm. & Bigel. var. *ursina* (Weber) Parish–Grizzly bear prickly-pear
Syn.: *Opuntia ursina* Weber

Opuntia erinacea Engelm. & Bigel. var. *utahensis* (Engelm.) L. Benson
Syn.: *Opuntia rhodantha* Schum.

Opuntia fragilis Nutt. var. *brachyarthra* (Engelm. & Bigel.) Coult.

Opuntia fragilis Nutt. var. *fragilis*–Little prickly-pear

Opuntia fulgida Engelm. var. *fulgida*–Jumping chain-fruit cholla

Opuntia fulgida Engelm. var. *mammillata* (Schott) Coult.

Opuntia imbricata (Haw.) DC.–Tree cholla

Opuntia X kelvinensis V. & K. Grant pro sp.
Syn.:*Opuntia kelvinensis* V. & K. Grant

Opuntia kleiniae DC. var. *tetracantha* (Toumey) W. T. Marshall
Syn.: *Opuntia tetrancistra* Toumey

Opuntia kunzei Rose.
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *kunzei* (Rose) L. Benson; *Opuntia kunzei* Rose var. *wrightiana* (E. M. Baxter) Peebles; *Opuntia wrightiana* E. M. Baxter

Opuntia leptocaulis DC.–Desert Christmas cactus, Pencil cholla

Opuntia littoralis (Engelm.) Cockl. var. *vaseyi* (Coult.) Benson & Walkington

Opuntia macrocentra Engelm.–Purple prickly-pear
Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *macrocentra* (Engelm.) L. Benson; *Opuntia violacea* Engelm. ex B. D. Jackson var. *violacea*

Opuntia macrorhiza Engelm. var. *macrorhiza*–*P*lains prickly-pear
Syn.: *Opuntia plumbea* Rose

Opuntia macrorhiza Engelm. var. *pottsii* (Salm-Dyck) L. Benson

Opuntia martiniana (L. Benson) Parfitt
Syn.: *Opuntia littoralis* (Engelm.) Cockerell var. *martiniana* (L. Benson) L. Benson; *Opuntia macrocentra* Engelm. var. *martiniana L. Benson*

Opuntia nicholii L. Benson–Navajo Bridge prickly-pear

Opuntia parishii Orcutt.
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *parishii* (Orcutt) L. Benson

Opuntia phaeacantha Engelm. var. *laevis* (Coult.) L. Benson
Syn.: *Opuntia laevis* Coult.

Opuntia phaeacantha Engelm. var. *major* Engelm.

Opuntia phaeacantha Engelm. var. *phaeacantha*

Opuntia phaeacantha Engelm. var. *superbospina* (Griffiths) L. Benson

Opuntia polyacantha Haw. var. *juniperina* (Engelm.) L. Benson

Opuntia polyacantha Haw. var. *rufispina* (Engelm.) L. Benson

Opuntia polyacantha Haw. var. *trichophora* (Engelm. & Bigel.) L. Benson

Opuntia pulchella Engelm.–Sand cholla

Opuntia ramosissima Engelm.–Diamond cholla

Opuntia santa-rita (Griffiths & Hare) Rose–Santa Rita prickly-pear
Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *santa-rita* (Griffiths & Hare) L. Benson

Opuntia spinosior (Engelm.) Toumey–Cane cholla

Opuntia versicolor Engelm.–Staghorn cholla

Opuntia vivipara Engelm

Opuntia whipplei Engelm. & Bigel. var. *multigeniculata* (Clokey) L. Benson

Opuntia whipplei Engelm. & Bigel. var. *whipplei*–*W*hipple cholla

Opuntia wigginsii L. Benson

Pediocactus papyracanthus (Engelm.) L. Benson Grama grass cactus
Syn.: *Toumeya papyracanthus* (Engelm.) Britt. & Rose

Pediocactus simpsonii (Engelm.) Britt & Rose var. *simpsonii*

Peniocereus greggii (Engelm.) Britt. & Rose var. *greggii*–Night-blooming cereus
Syn.: *Cereus greggii* Engelm.

Peniocereus greggii (Engelm.) Britt & Rose var. *transmontanus*–Queen-of-the-Night

Peniocereus striatus (Brandegee) Buxbaum.
Syn.: *Neoevansia striata* (Brandegee) Sanchez-Mejorada; *Cereus striatus* Brandegee; *Wilcoxia diguetii* (Webber) Peebles

Sclerocactus parviflorus Clover & Jotter var. *intermedius* (Peebles) Woodruff & L. Benson
Syn.: *Sclerocactus intermedius* Peebles

Sclerocactus parviflorus Clover & Jotter var. *parviflorus*
Syn.: *Sclerocactus whipplei* (Engelm. & Bigel.) Britt. & Rose var. *roseus* (Clover) L. Benson

Sclerocactus pubispinus (Engelm.) L. Peebles

Sclerocactus spinosior (Engelm.) Woodruff & L. Benson
Syn.: *Sclerocactus pubispinus* (Engelm.) L. Benson var. *sileri* L. Benson

Sclerocactus whipplei (Engelm. & Bigel.) Britt. & Rose

Stenocereus thurberi (Engelm.) F. Buxbaum–Organ pipe cactus
Syn.: *Cereus thurberi* Engelm.; *Lemairocereus thurberi* (Engelm.) Britt. & Rose

CAMPANULACEAE Bellflower Family

Lobelia cardinalis L. ssp. *graminea* (Lam.) McVaugh–Cardinal flower

Lobelia fenestralis Cav.–Leafy lobelia

Lobelia laxiflora H. B. K. var. *angustifolia* A. DC.

CAPPARACEAE Cappar Family [=Capparidaceae]

Cleome multicaulis DC.–Playa spiderflower

CHENOPODIACEAE Goosefoot Family

Atriplex hymenelytra (Torr.) Wats.

CRASSULACEAE Stonecrop Family

Dudleya arizonica (Nutt.) Britt. & Rose
Syn.: *Echeveria pulverulenta* Nutt. ssp. *arizonica* (Rose) Clokey

Dudleya saxosa (M.E. Jones) Britt. & Rose ssp. *collomiae* (Rose) Moran
Syn.: *Echeveria collomiae* (Rose) Kearney & Peebles

Graptopetalum bartramii Rose
Syn.:*Echevaria bartramii* (Rose) K. & P.

Graptopetalum bartramii Rose–Bartram's stonecrop, Bartram's live-forever
Syn.: *Echeveria bartramii* (Rose) Kearney & Peebles

Graptopetalum rusbyi (Greene) Rose
Syn.: *Echeveria rusbyi* (Greene) Nels. & Macbr.

Sedum cockerellii Britt.

Sedum griffithsii Rose

Sedum lanceolatum Torr.
Syn.: *Sedum stenopetalum* Pursh

Sedum rhodanthum Gray

Sedum stelliforme Wats.

CROSSOSOMATACEAE Crossosoma Family

Apacheria chiricahuensis C. T. Mason–Chiricahua rock flower

CUCURBITACEAE Gourd Family

Tumamoca macdougalii Rose–Tumamoc globeberry

EUPHORBIACEAE Spurge Family

Euphorbia plummerae Wats.–Woodland spurge

Sapium biloculare (Wats.) Pax–Mexican jumping-bean

FABACEAE Pea Family [=Leguminosae]

Astragalus corbrensis Gray var. *maguirei* Kearney

Astragalus cremnophylax Barneby var. *myriorraphis* Barneby–Cliff milk-vetch

Astragalus hypoxylus Wats.–Huachuca milk-vetch

Astragalus nutriosensis Sanderson–Nutrioso milk-vetch

Astragalus xiphoides (Barneby) Barneby–Gladiator milk-vetch

Cercis occidentalis Torr.–California redbud

Errazurizia rotundata (Woot.) Barneby
Syn.: *Parryella rotundata* Woot.

Lysiloma microphylla Benth. var. *thornberi* (Britt. & Rose) Isely–Feather bush
Syn.: *Lysiloma thornberi* Britt. & Rose

Phaseolus supinus Wiggins & Rollins

FOUQUIERIACEAE Ocotillo Family

Fouquieria splendens Engelm.–Ocotillo, coach-whip, monkey-tail

GENTIANACEAE Gentian Family

Gentianella wislizenii (Engelm.) J. Gillett
Syn.: *Gentiana wislizenii* Engelm.

LAMIACEAE Mint Family

Hedeoma diffusum Green–Flagstaff pennyroyal

Salvia dorrii ssp. *mearnsii*

Trichostema micranthum Gray

LILIACEAE Lily Family

Allium acuminatum Hook.

Allium bigelovii Wats.

Allium biseptrum Wats. var. *palmeri* (Wats.) Cronq.
Syn.: *Allium palmeri* Wats.

Allium cernuum Roth. var. *neomexicanum* (Rydb.) Macbr.–Nodding onion

Allium cernuum Roth. var. *obtusum* Ckll.

Allium geyeri Wats. var. *geyeri*

Allium geyeri Wats. var. *tenerum* Jones

Allium kunthii Don

Allium macropetalum Rydb.

Allium nevadense Wats. var. *cristatum* (Wats.) Ownbey

Allium nevadense Wats. var. *nevadense*

Allium parishii Wats.

Allium plummerae Wats.

Allium rhizomatum Woot. & Standl. Incl.: *Allium glandulosum* Link & Otto *sensu* Kearney & Peebles

Androstephium breviflorum Wats.–Funnel-lily

Calochortus ambiguus (Jones) Ownbey

Calochortus aureus Wats.
Syn.: *Calochortus nuttallii* Torr. & Gray var. *aureus* (Wats.) Ownbey

Calochortus flexuosus Wats.–Straggling mariposa

Calochortus gunnisonii Wats.

Calochortus kennedyi Porter var. *kennedyi*–Desert mariposa

Calochortus kennedyi Porter var. *munzii* Jeps.

Dichelostemma pulchellum (Salisbi) Heller var. *pauciflorum* (Torr.) Hoover

Disporum trachycarpum (Wats.) Benth. & Hook. var. *subglabrum* Kelso

Disporum trachycarpum (Wats.) Benth. & Hook. var. *trachycarpum*

Echeandia flavescens (Schultes & Schultes) Cruden
Syn.: *Anthericum torreyi* Baker

Eremocrinum albomarginatum Jones

Fritillaria atropurpurea Nutt.

Hesperocallis undulata Gray–Ajo lily

Lilium parryi Wats.–Lemon lily

Lilium umbellatum Pursh

Maianthemum racemosum (L.) Link. ssp. *amplexicaule* (Nutt.) LaFrankie
Syn.: *Smilacina racemosa* (L.) Desf. var. *amplexicaulis* (Nutt.) Wats.

Maianthemum racemosum (L.) Link ssp. *racemosum*–False Solomon's seal
Syn.: *Smilacina racemosa* (L.) Desf. var. *racemosa*; *Smilacina racemosa* (L.) Desf. var. *cylindrata* Fern.

Maianthemum stellatum (L.) Link
Syn.: *Smilacina stellata* (L.) Desf.–Starflower

Milla biflora Cav.–Mexican star

Nothoscordum texanum Jones

Polygonatum cobrense (Woot. & Standl.) Gates

Streptopus amplexifolius (L.) DC.–Twisted stalk

Triteleia lemmonae (Wats.) Greene

Triteleiopsis palmeri (Wats.) Hoover

Veratrum californicum Durand.–False hellebore

Zephyranthes longifolia Hemsl.–Plains rain lily

Zigadenus elegans Pursh–White camas, alkali-grass

Zigadenus paniculatus (Nutt.) Wats.–Sand-corn

Zigadenus virescens (H. B. K.) Macbr.

MALVACEAE Mallow Family

Abutilon parishii Wats.–Tucson Indian mallow

Abutilon thurberi Gray–Baboquivari Indian mallow

NOLINACEAE Nolina

CHAPTER 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

Dasylirion wheeleri Wats.–Sotol, desert spoon
Nolina bigelovii (Torr.)Wats.–Bigelow's nolina
Nolina microcarpa Wats.–Beargrass, sacahuista
Nolina parryi Wats.–Parry's nolina
Nolina texana Wats. var. *compacta* (Trel.) Johnst.–Bunchgrass

ONAGRACEAE Evening Primrose Family

Camissonia exilis (Raven) Raven

ORCHIDACEAE Orchid Family

Calypso bulbosa (L.) Oakes var. *americana* (R. Br.) Luer

Coeloglossum viride (L.) Hartmann var. *virescens* (Muhl.) Luer
Syn.: *Habenaria viridis* (L.) R. Br. var. *bracteata* (Muhl.) Gray

Corallorhiza maculata Raf.–Spotted coral root

Corallorhiza striata Lindl.–Striped coral root

Corallorhiza wisteriana Conrad–Spring coral root

Epipactis gigantea Douglas ex Hook.–Giant helleborine

Goodyera oblongifolia Raf.

Goodyera repens (L.) R. Br.

Hexalectris spicata (Walt.) Barnhart–Crested coral root

Listera convallarioides (Swartz) Nutt.–Broad-leaved twayblade

Malaxis corymbosa (S. Wats.) Kuntze

Malaxis ehrenbergii (Reichb. f.) Kuntze

Malaxis macrostachya (Lexarza) Kuntze–Mountain malaxia
Syn.: *Malaxis soulei* L. O. Williams

Malaxis tenuis (S. Wats.) Ames

Platanthera hyperborea (L.) Lindley var. *gracilis* (Lindley) Luer
Syn.: *Habenaria sparsiflora* Wats. var. *laxiflora* (Rydb.) Correll

Platanthera hyperborea (L.) Lindley var. *hyperborea*–Northern green orchid
Syn.: *Habenaria hyperborea* (L.) R. Br.

Platanthera limosa Lindl.–Thurber's bog orchid
Syn.: *Habenaria limosa* (Lindley) Hemsley

Platanthera sparsiflora (Wats.) Schlechter var. *ensifolia* (Rydb.) Luer

Platanthera sparsiflora (Wats.) var. *laxiflora* (Rydb.) Correll

Platanthera sparsiflora (Wats.) Schlechter var. *sparsiflora*–Sparsely-flowered bog orchid
Syn.: *Habenaria sparsiflora* Wats.

Platanthera stricta Lindl.–Slender bog orchid
Syn.: *Habenaria saccata* Greene; *Platanthera saccata* (Greene) Hulten

Platanthera viridis (L.) R. Br. var. *bracteata* (Muhl.) Gray–Long-bracted habenaria

Spiranthes michaucana (La Llave & Lex.) Hemsl.

Spiranthes parasitica A. Rich. & Gal.

Spiranthes romanzoffiana Cham.–Hooded ladies tresses

PAPAVERACEAE Poppy Family

Arctomecon californica Torr. & Frém.–Golden-bear poppy, Yellow-flowered desert poppy

PINACEAE Pine Family

Pinus aristata Engelm.–Bristlecone pine

POLYGONACEAE Buckwheat Family

Eriogonum apachense Reveal

Eriogonum capillare Small

Eriogonum mortonianum Reveal–Morton's buckwheat

Eriogonum ripleyi J. T. Howell–Ripley's wild buckwheat, Frazier's Well buckwheat

Eriogonum thompsonae Wats. var. *atwoodii* Reveal–Atwood's buckwheat

PORTULACEAE Purslane Family

Talinum humile Greene–Pinos Altos flame flower

Talinum marginatum Greene

Talinum validulum Greene–Tusayan flame flower

PRIMULACEAE Primrose Family

Dodecatheon alpinum (Gray) Greene ssp. *majus* H. J. Thompson

Dodecatheon dentatum Hook. ssp. *ellisiae* (Standl.) H. J. Thompson

Dodecatheon pulchellum (Raf.) Merrill

Primula hunnewellii Fern.

Primula rusbyi Greene

Primula specuicola Rydb.

RANUNCULACEAE Buttercup Family

Aquilegia caerulea James ssp. *pinetorum* (Tidest.) Payson–Rocky Mountain Columbine

Aquilegia chrysantha Gray

Aquilegia desertorum (Jones) Ckll.–Desert columbine, Mogollon columbine

Aquilegia elegantula Greene

Aquilegia longissima Gray–Long Spur Columbine

Aquilegia micrantha Eastw.

Aquilegia triternata Payson

ROSACEAE Rose Family

Rosa stellata Woot.–ssp. *abyssa* A. Phillips Grand Canyon rose
Vauquelinia californica (Torr.) Sarg. ssp. *pauciflora* (Standl.) Hess & Henrickson–Few-flowered Arizona rosewood

SCROPHULARIACEAE Figwort Family

Castilleja mogollonica Pennell

Penstemon albomarginatus Jones

Penstemon bicolor (Brandeg.) Clokey & Keck ssp. *roseus* Clokey & Keck

Penstemon clutei A. Nels.

Penstemon distans N. Holmgren–Mt. Trumbull beardtongue

Penstemon linarioides spp. maguirei

SIMAROUBACEAE Simarouba Family

Castela emoryi (Gray) Moran & Felger–Crucifixion thorn
Syn.: *Holacantha emoryi* Gray

STERCULIACEAE Cacao Family

Fremontodendron californicum (Torr.) Coville–Flannel bush

C. Salvage assessed native plants as prescribed in A.R.S. § 3-903(B)(3) that require a permit for removal:

BIGNONIACEAE Bignonia Family

Chilopsis linearis (Cav.) Sweet var. *arcuata* Fosberg–Desert-willow

Chilopsis linearis (Cav.) Sweet var. *glutinosa* (Engelm.) Fosberg

FABACEAE Pea Family [=Leguminosae]

Cercidium floridum Benth.–Blue palo verde

Cercidium microphyllum (Torr.) Rose & Johnst.–Foothill palo verde

Olneya tesota Gray–Desert ironwood

Prosopis glandulosa Torr. var. *glandulosa*–Honey mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckll.

Prosopis glandulosa Torr. var. *torreyana* (Benson) M. C. Johnst.–Western honey mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson

Prosopis pubescens Benth.–Screwbean mesquite

Prosopis velutina Woot.–Velvet mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.

Psorothamnus spinosus (Gray) Barneby–Smoke tree.
Syn.: *Dalea spinosa* Gray

D. Harvest restricted native plants as prescribed at A.R.S. § 3-903(B)(4) that require a permit to cut or remove the plants for their by-products, fibers, or wood:

AGAVACEAE Agave Family (including Nolinaceae)

Nolina bigelovii (Torr.) Wats.–Bigelow's nolina

Nolina microcarpa Wats.–Beargrass, sacahuista

Nolina parryi Wats.–Parry's nolina

Nolina texana Wats. var. *compacta* (Trel.) Johnst.–Bunchgrass

Yucca baccata Torr. var. *baccata*–Banana yucca

Yucca schidigera Roezl.–Mohave yucca, Spanish dagger

FABACEAE Pea Family [=Leguminosae]

Olneya tesota Gray–Desert ironwood

Prosopis glandulosa Torr. var. *glandulosa*–Honey mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckll.

Prosopis glandulosa Torr. var. *torreyana* (Benson) M. C. Johnst.–Western honey mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson

Prosopis pubescens Benth.–Screwbean mesquite

Prosopis velutina Woot.–Velvet mesquite
Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.

Historical Note

New Section recodified from 3 A.A.C. 4, Article 6 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.

2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.

3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.

5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.

6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.

7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.

8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.

9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.

10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.

11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.

12. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The director may:

1. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.

3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.

4. Cooperate with the office of tourism in distributing Arizona tourist information.

5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.

6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.

7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.

8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

3-903. Protected group of plants; botanical names govern; categories of protected plants; power to add or remove plants; annual hearing

A. The protected group of native plants shall include, and protected native plants shall be, any plant or part of a plant, except, unless otherwise specifically included, its seeds or fruit, which is growing wild on state land or public land or on privately owned land without being propagated or cultivated by human beings and which is included by the director on any of the definitive lists of protected categories of protected native plants described in this section. The director by definitive lists may divide any protected category into subcategories which are to receive different treatment under the rules adopted under this article to conserve or protect such plants. In the preparation of each list of plants within a protected category or subcategory the director shall list by botanical names all of those protected plants which are to fall within the protection of that category or subcategory. The botanical names of the listed plants govern in all cases in the interpretation of this article and any rules adopted under this article.

B. The director shall establish by rule the lists of plants in the following categories of protected native plants:

1. Highly safeguarded native plants to be afforded the exclusive protections, including the use of scientific or threatened collection and salvage permits, provided this category in this chapter. This category includes those species of native plants and parts of plants, including the seeds and fruit, whose prospects for survival in this state are in jeopardy or which are in danger of extinction throughout all or a significant portion of their ranges, and those native plants which are likely within the foreseeable future to become jeopardized or in danger of extinction throughout all or a significant portion of their ranges. This category also includes those plants resident to this state and listed as endangered, threatened, or category 1 in the federal endangered species act of 1973 (P.L. 93-205; 87 Stat. 884; 16 United States Code sections 1531 et seq.), as amended, and any regulations adopted under that act.

2. Salvage restricted native plants to be afforded the exclusive protections involving the use of salvage permits, tags and seals provided in this chapter. This category includes those native plants which are not included in the highly safeguarded category but are nevertheless subject to a high potential for damage by theft or vandalism.

3. Salvage assessed native plants to be afforded the exclusive protections, involving the use of salvage tags and seals and annual salvage permits, provided in this chapter. This category includes those native plants which are not included in either the highly safeguarded or salvage restricted categories but nevertheless have a sufficient value if salvaged to support the cost of salvage tags and seals.

4. Harvest restricted native plants to be afforded the exclusive protections involving the use of harvest permits and wood receipts provided in this chapter. This category includes those native plants which are not included in the highly safeguarded category but are subject to excessive harvesting or overcutting because of the intrinsic value of their by-products, fiber or woody parts.

C. The director by rule may add or remove a native plant to or from the protected group or any of the categories of protected native plants.

D. The director shall hold a public hearing on native plants at least every twelve months after giving notice as required by section 3-912, subsection B.

3-905. Destruction of protected plants by state

A. Except in an emergency, if a state agency proposes to remove or destroy protected native plants over an area of state land exceeding one-fourth acre, the agency shall notify the department in writing as provided in section 3-904 at least sixty days before the plants are destroyed, and any such destruction must occur within one year of the date of destruction disclosed in the notice. The department shall post and disseminate copies of the notice as provided in section 3-904, subsection E. This state and its agencies and political subdivisions are exempt from any fees established for salvaged plants.

B. If the director determines that the proposed action by the state agency may affect a highly safeguarded plant, he shall consult with the state agency and other appropriate parties and use the best scientific data available to issue a written finding as to whether the proposed action would appreciably reduce the likelihood of survival or recovery of the plant taxon in this state. If the determination is affirmative, the director shall also specify reasonable, prudent and distinct alternatives to the proposed project that can be implemented and are consistent with conserving the plant taxon.

C. The director shall adopt rules for the disposal and salvage of native plants subject to removal or destruction by a state agency either under permit to other government agencies or nonprofit organizations or sale to the general public or commercial dealers. The department may issue permits to donate, sell, salvage or harvest the plants after the it ascertains the validity of the request and determines the kinds and approximate number of the plants involved. The permit shall specify the number and species of protected native plants and the area from which they may be taken.

3-912. Rules; additional notice requirements

A. The director shall adopt rules to enforce this chapter pursuant to title 41, chapter 6.

B. In addition to the notice requirements prescribed in title 41, chapter 6, at least thirty days before any hearing at which a new rule or a change in a rule will be considered the department shall send a copy of the notice by first class mail to persons or entities requesting notice pursuant to section 3-904, subsection E.

D-5.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22

Amend: R9-22-1413, R9-22-1421, R9-22-1432

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: November 12, 2024

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22

Amend: R9-22-1413, R9-22-1421, R9-22-1432

Summary:

This regular rulemaking from the Arizona Health Care Cost Containment System (AHCCCS) seeks to amend three (3) rules in Title 9, Chapter 22, Article 12 regarding AHCCCS Medical Coverage for Households. Specifically, AHCCCS indicates these rules provide guidelines for eligibility criteria under AHCCCS for medical coverage to qualifying households and intend to ensure that eligible families have access to essential medical services, facilitating healthcare affordability and accessibility statewide.

AHCCCS indicates certain current rules do not align with federal regulations or current practice, or provide true clarity to members as well as individuals utilizing them in determining eligibility. AHCCCS states it plans to amend these rules to ensure they align with the federal regulations in order to make them clearer and more understandable as identified in the recent Five-Year Review Report for these rules, which was approved by the Council on May 7, 2024. AHCCCS states failure to conduct this rulemaking will continue the misalignment of these regulations with federal standards and current practice.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

AHCCCS cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

AHCCCS indicates it did not review any study relevant to this rulemaking.

4. **Summary of the agency's economic impact analysis:**

AHCCCS anticipates no economic impact on small businesses or consumers. These changes are required to bring the rules into compliance with federal regulations so that AHCCCS may still draw down federal matching funds for services provided to members. These rules do not impose compliance or reporting requirements on small businesses beyond those already necessary to comply with federal law and state statute. Therefore, AHCCCS states, these changes are the most cost-effective way to continue to fund the care for members with no anticipated increase in costs to AHCCCS.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

AHCCCS did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as flexibility identified by the Center for Medicare and Medicaid Services.

6. **What are the economic impacts on stakeholders?**

The rule is designed to provide a longer eligibility period for postpartum individuals. The agency states that newly eligible members will be directly benefitted by this rulemaking.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

AHCCCS indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register on July 19, 2024 and the Notice of Final Rulemaking now before the Council for consideration.

8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

AHCCCS indicates it did not receive any public comments regarding this rulemaking.

9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

AHCCCS indicates the rules do not require the issuance of a permit, license, or agency authorization.

10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

AHCCCS indicates federal law 42 CFR Part 435 is applicable to these rules. AHCCCS indicates the rules are not more stringent than federal law.

11. Conclusion

This regular rulemaking from AHCCCS seeks to amend three (3) rules in Title 9, Chapter 22, Article 12 regarding AHCCCS Medical Coverage for Households. Specifically, AHCCCS indicates these rules provide guidelines for eligibility criteria under AHCCCS for medical coverage to qualifying households and intend to ensure that eligible families have access to essential medical services, facilitating healthcare affordability and accessibility statewide.

AHCCCS indicates certain current rules do not align with federal regulations or current practice, or provide true clarity to members as well as individuals utilizing them in determining eligibility. AHCCCS states it plans to amend these rules to ensure they align with the federal regulations in order to make them clearer and more understandable as identified in the recent Five-Year Review Report for these rules, which was approved by the Council on May 7, 2024. AHCCCS states failure to conduct this rulemaking will continue the misalignment of these regulations with federal standards and current practice.

AHCCCS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

October 22, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: R9-22-14 Rulemaking

Dear Ms. Klein:

1.	The close of record date:	8/19/2024
2.	Does the rulemaking activity relate to a Five Year Review Report:	Yes
a.	If yes, the date the Council approved the Five Year Review Report:	5/7/2024
3.	Does the rule establish a new fee:	No
a.	If yes, what statute authorizes the fee:	N/A
4.	Does the rule contain a fee increase:	No
5.	Is an immediate effective date requested pursuant to A.R.S. 41-1032:	No

AHCCCS certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. AHCCCS certifies that the preamble states that it did not rely on any such study in the agency's evaluation of or justification for the rule.

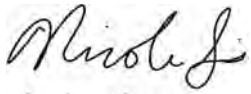
AHCCCS certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
2. If applicable: An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. If applicable: The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;
4. If applicable: Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;
5. If applicable: Material incorporated by reference;
6. General and specific statutes authorizing the rules, including relevant statutory definitions; and

7. If applicable: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,



Nicole Fries
Chief Deputy General Counsel

Attachments

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

PREAMBLE

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

April 18, 2024

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

R9-22-1413	Amend
R9-22-1421	Amend
R9-22-1432	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. § 36-2903.01

Implementing statute: A.R.S. § 36-2901

4. The effective date of the rule:

This rule shall become effective 60 days after a certified original and preamble are filed in the Office of the Secretary of State. The effective date is (to be filled in by *Register* editor).

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):

Not applicable

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: 30 A.A.R. 2380, Issue Date: July 19, 2024, Issue Number: 29, File number: R24-130

Notice of Proposed Rulemaking: 30 A.A.R. 2357, Issue Date: July 19, 2024, Issue Number: 29, File number: R24-128

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

Name: Sladjana Kuzmanovic

Title: Sr. Rules Analyst

Division: AHCCCS Office of the General Counsel
Address: 801 E. Jefferson Street, MD 6200
Phoenix, AZ 85034
Telephone: (602) 417-4232
Fax: (602) 253-9115
Email: AHCCCSRules@azahcccs.gov
Website: www.azahcccs.gov

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

Pursuant to A.R.S. § 36-2903.01, AHCCCS is mandated to adopt rules that establish a streamlined eligibility process, to be followed when determining eligibility for healthcare services provided. These rules provide guidelines for eligibility criteria under AHCCCS for medical coverage to qualifying households and intend to ensure that eligible families have access to essential medical services, facilitating healthcare affordability and accessibility statewide. However, certain current rules do not align with some of the federal regulations or current practice, or provide true clarity to members as well as individuals utilizing them in determining eligibility. AHCCCS plans to amend these rules to ensure they align with the federal regulations in order to make them clearer and more understandable as identified in recent five-year report approved by the Governor's Regulatory Review Council on May 7, 2024. Failure to conduct this rulemaking will continue the misalignment of these regulations with federal standards and current practice.

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:

The Administration did not review or rely on any study for this rulemaking.

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 Administration anticipates no impact on economic, small business and consumers as compared to last making of these rules. These changes are required to bring the rules into compliance with federal regulations, so that AHCCCS may still draw down federal matching funds for services provided to these members. These rules do not impose compliance or reporting requirements on small businesses beyond those already necessary to comply with federal law and state statute. Therefore, these changes are the most cost-effective way to continue to fund the care for these members, with no anticipated increase in costs to AHCCCS.

The last rulemaking in August 2023 focused on eligibility for postpartum pregnant women and there was no anticipated cost to the state because the federal government approved a waiver that allowed for 100% federal funds to cover the additional period of eligibility. This anticipated impact was carried out in the actual impact of the rule. Therefore, the cost to the state for these rules remains the same as during the last rulemaking, and

these changes are compliance-related in nature, with not anticipated additional cost.

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

There are no changes between the proposed rulemaking and the final rulemaking.

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

There were no public or stakeholder comments made about the rulemaking.

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:

There are no other matters prescribed by statute applicable specifically to the Administration or this specific rulemaking.

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:

The rule does not require the issuance of a regulatory permit. Therefore, a general permit is not applicable.

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:

The rules are not more stringent than 42 CFR Part 435.

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:

No business competitiveness analysis was submitted to the Administration.

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

16. The full text of the rules follows:

TITLE 9. HELTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINEMNT SYSTEM - ADMINISTRATION

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR HOUSEHOLDS

Section

R9-22-1413. Timeframes, Reinstatement of an Application

R9-22-1421. MAGI Based Income Eligibility

R9-22-1432. Young Adult Transitional Insurance

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR HOUSEHOLDS

R9-22-1413. TIMEFRAMES, REINSTATEMENT OF AN APPLICATION

A. The Administration or its designee shall complete an eligibility determination under R9-22-306(A)(1) unless:

1. The applicant is pregnant. The Administration or its designee shall complete an eligibility determination for a pregnant woman within 20 days after the application date unless additional information is required to determine eligibility; or
2. The applicant is in a hospital as an inpatient at the time of application. Within seven days of the Administration or its designee's receipt of a signed application the Administration or its designee shall complete an eligibility determination if the Administration or its designee does not need additional information or verification to determine eligibility.

B. The Administration or its designee shall ~~reopen or reinstate~~ redetermine eligibility of an individual who is discontinued for failure to submit the renewal form or necessary information, without requiring a new application, if the individual submits the renewal form or necessary information within 90 days after the date of discontinuance.

R9-22-1421. MAGI BASED INCOME ELIGIBILITY

A. In determining eligibility, if an individual would otherwise be ineligible under this Article due to excess income, the Administration or its designee shall subtract an amount equivalent to five percentage points of the Federal Poverty Level (FPL) from the household income.

B. A person is eligible under this Article when:

1. Subject to subsection (A), the monthly household income does not exceed the appropriate percentage of the FPL under R9-22-1427;
2. If ineligible under (B)(1), the household income determined in accordance with 26 CFR 1.36B–1(e) is below 100 percent FPL; or
3. For eligibility under R9-22-1437, the person's income during the period defined in R9-22-1437(C) does not exceed the percentage of the FPL under R9-22-1437(B).

C. The Administration or its designee shall consider the following factors when determining the income period to use to determine monthly income:

1. Type of income,
2. Frequency of income,
3. If source of income is new or terminated, or
4. Income fluctuation.

R9-22-1432. YOUNG ADULT TRANSITIONAL INSURANCE

An individual is eligible for AHCCCS medical coverage when the individual meets all of the following eligibility requirements:

1. Is 18 through 25 years of age;
2. Was in ~~the custody of the Department of Economic Security under A.R.S. Title 8, Chapter 5 or Chapter 10~~ foster care under the responsibility of the State or Tribe within the State on the individual's 18th birthday;
3. Was eligible for and receiving AHCCCS Medical Coverage on the individual's 18th birthday; and
4. Is not eligible for AHCCCS Medical Coverage under 42 U.S.C. 1396a(a)(10)(A)(i)(I) - (VII).

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS (R9-22-711)

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR HOUSEHOLDS (R9-22-1428)

- **Identification of rulemaking.**

The Arizona Health Care Cost Containment System Administration is the single State agency responsible for administration of the Medicaid program in Arizona. The program is jointly funded by the State, counties, and the federal government. Federal law imposes a substantial number of conditions on the receipt of federal financial assistance reflected in federal statutes (42 U.S.C. § 1396 et seq.) and regulation (generally, 42 C.F.R. Parts 430 through 455). Certain AHCCCS members receiving postpartum care are currently eligible for 60-days postpartum coverage through AHCCCS. As a result of Arizona's decision to opt-in to a 12-months postpartum coverage option through Laws 2022, Chapter 314, AHCCCS submitted a State Plan Amendment for CMS's approval. If the State Plan Amendment is approved, individuals who meet the requirements specified in rule, will be eligible for the 12 months of postpartum coverage while some individuals will still qualify only for the 60 days of postpartum coverage. Proposed AHCCCS rule R9-22-1428 specifies the different eligibility requirements for the two different postpartum coverage categories.

In addition, modifications to A.A.C. R9-22-711 as well as language added to R9-22-1428 clarify that individuals who are more than 60 days postpartum are subject to

copays. The previous language regarding copays specified that postpartum individuals (in general) were not subject to copays, because the only postpartum eligibility available was for the 60 days. In the 12 month postpartum coverage option, individuals who are more than 60-days postpartum are subject to copays.

- **The conduct and its frequency of occurrence that the rule is designed to change:**

  The rule is designed to provide a longer eligibility period for postpartum individuals.

- **The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:**

  If the rule is not changed then the rules will not be aligned with AHCCCS's contract with the Center for Medicare and Medicaid Services (CMS), the State Plan.

- **The estimated change in frequency of the targeted conduct expected from the rule change:**

  There is no estimated change in frequency of the targeted conduct.

2. **Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rule making.**

   The costs to the general fund were considered when the legislature approved this extended eligibility period in House Bill 2863, however newly eligible members will be directly benefitted by this rulemaking.

3. **Cost benefit analysis.**

a. **Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:**

i. Cost:

The federal government, through the Medicaid program, will fund a substantial percentage of the services members are likely to receive when in this new eligibility category. The Administration does not anticipate that the rule will have an effect on State revenues or materially impact other agencies.

ii. Benefit:

The Administration anticipates that the rulemaking will ensure better health outcomes for postpartum individuals.

iii. Need for additional Full-time Employees:

The Agency does not anticipate the need to hire full-time employees as a result of this rulemaking.

- **Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

This rulemaking does not directly affect political subdivisions.

4. **General description of the probable impact on private and public employment in**

businesses, agencies, and political subdivisions of this state directly affected by the rulemaking.

The Agency anticipates that public and private employment will not be impacted by the changes.

5. **Statement of probable impact of the proposed rule on small businesses. The statement shall include:**

   a. **Identification of the small businesses subject to the proposed rulemaking.**

      The rulemaking will not impact small businesses.

   b. **Administrative and other costs required for compliance with the proposed rulemaking.**

      The Agency anticipates no impact on the administrative expenses of small businesses.

   c. **Description of methods prescribed in section A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not use each method:**

      i. **Establishing less stringent compliance or reporting requirements in the rule for small businesses;**

         This rule does not impose compliance or reporting requirements on small businesses.

      ii. **Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;**

         This rule does not impose compliance or reporting requirements on small businesses.

iii. **Consolidate or simplify the rule's compliance or reporting requirements for small businesses;**

This rule does not impose compliance or reporting requirements on small businesses.

iv. **Establish performance standards for small businesses to replace design or operational standards in the rule; and**

This rule does not establish performance standards for small businesses.

v. **Exempting small businesses from any or all requirements of the rule.**

Exempting small businesses is not applicable to this rule.

d. **The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

The rule will not affect private persons and consumers unless they will be part of this new eligibility category.

6. **Statement of the probable effect on state revenues.**

It is anticipated that the rule will not affect state revenues.

7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

The Agency did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as flexibility identified by CMS.

8. <u>A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.</u>

No additional data was obtained and used as the basis of this rule.

C. Upon reaching his or her 21st birthday, the member's CRS Designation will be ended.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 24 A.A.R. 2855, effective November 16, 2018 (Supp. 18-3).

R9-22-1306. Repealed

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Repealed by final rulemaking at 24 A.A.R. 2855, effective November 16, 2018 (Supp. 18-3).

R9-22-1307. Covered Services

The Administration will cover medically necessary services as described within Article 2 unless otherwise specified in contract.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

R9-22-1308. Repealed

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

R9-22-1309. Repealed

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR HOUSEHOLDS

R9-22-1401. General Information

A. Scope. This Article contains eligibility criteria to determine whether a household or individual is eligible for AHCCCS medical coverage. Eligibility criteria described under Article 3 applies to this Article.

B. Definitions. In addition to definitions contained in R9-22-101 and A.R.S. § 36-2901, the words and phrases in this Article, Article 3 and Article 15 have the following meanings unless the context explicitly requires another meaning:

"Burial plot" means a space reserved in a cemetery, crypt, vault, or mausoleum for the remains of a deceased person.

"Caretaker relative" means:

A parent of a dependent child with whom the child is living;

When the dependent child does not live with a parent or the parent in the home is incapacitated, another relative of the child by blood, adoption, or marriage in the home who assumes primary responsibility for the child's care; or

A woman in her third trimester of pregnancy with no other dependent children.

"Cash assistance" means a program administered by the Department that provides assistance to needy families with dependent children under 42 U.S.C. 601 et seq.

"Dependent child" means a child under the age of 18, or if age 18 is a full-time student in secondary school or equivalent vocational or technical training, if reasonably expected to complete such school or training before turning age 19.

"MAGI – based income" means Modified Adjusted Gross Income as defined under 42 CFR 435.603(e).

"Medical expense deduction" or "MED" means the cost of the following expenses if incurred in the United States:

A medical service or supply that would be covered if provided to an AHCCCS member of any age under Articles 2 and 12 of this Chapter;

A medical service or supply that would be covered if provided to an Arizona Long-term Care System member under 9 A.A.C. 28, Articles 2 and 11;

Other necessary medical services provided by a licensed practitioner or physician;

Assistance with daily living if the assistance is documented in an individual plan of care by a nurse, social service worker, registered therapist, or dietitian under the supervision of a physician except when provided by the spouse of an applicant or the parent of a minor child;

Medical services provided in a licensed nursing home or in an alternative HCBS setting under R9-28-101;

Purchasing and maintaining an animal guide or service animal for the assistance of a member of the MED family unit under R9-22-1436; and

Health insurance premiums, deductibles, and coinsurance, if the insured is a member of the MED family unit.

"Monthly income" means the gross countable income received or projected to be received during the month or the monthly equivalent.

"Monthly equivalent" means a monthly countable income amount established by averaging, prorating, or converting a person's income.

"Spendthrift restriction" means a legal restriction on the use of a resource that prevents a payee or beneficiary from alienating the resource.

"Tax dependent" is described under 42 CFR 435.4.

"Taxpayer" means a person who expects to file a tax return, and does not expect to be claimed as a tax dependent by another person.

"Title IV-D" means Title IV-D of the Social Security Act, 42 U.S.C. 651-669, the statutes establishing the child support enforcement and paternity program.

"Title IV-E" means Title IV-E of the Social Security Act 42 U.S.C. 670-679, the statutes establishing the foster care and adoption assistance programs.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1). Punctuation error corrected with a parenthesis added at the beginning of the definition "Caretaker" (Supp. 20-4).

R9-22-1402. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1403. Agency Responsible for Determining Eligibility

The Administration or its designee shall determine eligibility under the provisions of this Article. The Administration or its designee shall not discriminate against an applicant or member because of race, color, creed, religion, ancestry, national origin, age, sex, or physical or mental disability.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1404. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1405. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1406. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1407. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 19 A.A.R. 3309, November 30, 2013 (Supp. 13-4). Section repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014; this Section was slated to be codified as repealed in Supp. 14-1. Due to a clerical error the Section wasn't repealed in this Chapter until Supp. 20-4.

R9-22-1408. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1409. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1410. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1411. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1412. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by exempt rulemaking at 10 A.A.R. 23, effective December 9, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1413. Time-frames, Reinstatement of an Application

A. The Administration or its designee shall complete an eligibility determination under R9-22-306(A)(1) unless:
1. The applicant is pregnant. The Administration or its designee shall complete an eligibility determination for a pregnant woman within 20 days after the application date unless additional information is required to determine eligibility; or
2. The applicant is in a hospital as an inpatient at the time of application. Within seven days of the Administration or its designee's receipt of a signed application the Administration or its designee shall complete an eligibility determination if the Administration or its designee does not need additional information or verification to determine eligibility.

B. The Administration or its designee shall reopen or reinstate eligibility of an individual who is discontinued for failure to submit the renewal form or necessary information, without requiring a new application, if the individual submits the renewal form or necessary information within 90 days after the date of discontinuance.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1414. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1415. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1416. Effective Date of Eligibility

A. Except as provided in R9-22-303 and subsections (B), (C) and (D), the effective date of eligibility is the first day of the month that the applicant files an application if the applicant is eligible that month, or the first day of the first eligible month following the application month except for:
1. The MED program under R9-22-1439, and
2. Eligibility for a newborn under R9-22-1429.

B. The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.

C. The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.

D. The effective date of eligibility for a newborn is no sooner than the date of birth.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1417. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1418. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1419. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1419.01. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1419.02. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1419.03. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1419.04. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1420. Income Eligibility Criteria

A. Evaluation of income. In determining eligibility, the Administration or its designee shall evaluate the following types of income received by a person identified in subsection (B):
1. Earned income, including in-kind income, before any deductions. For purposes of this Section, in-kind income means room, board, or provision for other needs in exchange for work performed. The person identified in subsection (B) shall ensure that the provider of the in-kind income establishes and verifies the monetary value of the item provided. The provider may be, but is not limited to:
   a. A landlord who provides all or a portion of rent or utilities in exchange for services;
   b. A store owner who gives goods such as groceries, clothes, or furniture in exchange for services; or
   c. An individual who trades goods such as a car, tools, trailer, building material, or gasoline in exchange for services;
2. Self-employment income under R9-22-1424, including gross business receipts minus business expenses; and
3. Unearned income, including deemed income under R9-22-317 from the sponsor of a non-citizen applicant.

B. MAGI income group. The Administration or its designee shall include the following persons in the MAGI income group:
1. When the applicant is a taxpayer include:
   a. The applicant,
   b. Everyone the applicant expects to claim as a tax dependent for the current year, and
   c. The applicant's spouse, when living with the applicant.
2. Except as provided in subsection (B)(3), when the applicant expects to be claimed as a tax dependent for the current year include:
   a. The taxpayer claiming the applicant,
   b. Everyone else the taxpayer expects to claim as a tax dependent,
   c. The taxpayer's spouse when living with the taxpayer, and
   d. The applicant's spouse, when living with the applicant.
3. When any of the following apply, determine the persons whose income is included as described in subsection (4)(a) or (4)(b) based on the applicant's age:
   a. The applicant expects to be claimed as a tax dependent by someone other than a spouse or natural, adopted or step-parent;
   b. The applicant is under age 19, expects to be claimed as a tax dependent by a natural, adopted or step-parent, lives with more than one such parent and the parents do not expect to file a joint tax return; or

c. The applicant is under age 19 and expects to be claimed as a tax dependent by a non-custodial parent.

4. When the applicant is not a taxpayer, does not expect to be claimed as a tax dependent and is:
   a. Under age 19. Include the income of the applicant and when living with the applicant, the applicant's:
      i. Spouse;
      ii. Natural, adopted and step-children;
      iii. Natural, adopted and step-parents;
      iv. Natural, adopted and step-siblings; and
   b. Age 19 or older. Include the income of the applicant and when living with the applicant, the applicant's:
      i. Spouse;
      ii. Natural, adopted and step-children under age 19.
5. When the applicant is a pregnant woman, the Administration or its designee shall also include the number of expected babies only for the pregnant woman's income group.
6. When the taxpayer cannot reasonably establish that a person is the taxpayer's tax dependent, inclusion of the person in the taxpayer's MAGI income group is determined as provided in subsection (B)(4).

C. A person whose income is counted. The Administration or its designee shall count the MAGI-based income of all members of an applicant's MAGI income group with the following exceptions:
1. The income of an individual who is included in the MAGI income group of his or her natural, adoptive or step parent and is not expected to be required to file a tax return for the year in which eligibility for Medicaid is being determined, is not counted whether or not the individual files a tax return.
2. The income of a tax dependent other than the taxpayer's spouse or biological, adopted or stepchild who is not expected to be required to file a tax return for the year in which eligibility for Medicaid is being determined is not counted when the tax dependent is included in the taxpayer's MAGI income group, whether or not the tax dependent files a tax return.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1421. MAGI based Income Eligibility

A. In determining eligibility, if an individual would otherwise be ineligible under this Article due to excess income, the Administration or its designee shall subtract an amount equivalent to five percentage points of the Federal Poverty Level (FPL) from the household income.

B. A person is eligible under this Article when:
1. Subject to subsection (A), the monthly household income does not exceed the appropriate FPL;
2. If ineligible under (B)(1), the household income determined in accordance with 26 CFR 1.36B–1(e) is below 100 percent FPL; or
3. For eligibility under R9-22-1437, the person's income during the period defined in R9-22-1437(C) does not exceed the FPL under R9-22-1437(B).

C. The Administration or its designee shall consider the following factors when determining the income period to use to determine monthly income:
1. Type of income,
2. Frequency of income,
3. If source of income is new or terminated, or
4. Income fluctuation.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1422. Methods for Calculating Monthly Income

A. Projecting income.
1. Description. Projecting income is a method of determining the amount of income that a person will receive.
2. Calculation. The Administration or its designee shall project income by:
   a. Converting income to a monthly equivalent,
   b. Using unconverted income, or
   c. Prorating income to determine a monthly equivalent.
3. Exclusion. When calculating projected monthly income, the Administration or its designee shall exclude an unusual variation in income under R9-22-1424(E), except for a month in which the variation is anticipated to occur.

B. Averaged income.
1. Description. Averaging income proportionally distributes the person's income received on a regular basis.
2. Calculation. To average income, the Administration or its designee shall add the amount of the income and divide by the total number of pay periods. If the amount of income received per pay period fluctuates, and the fluctuation is expected to continue, the Administration or its designee shall:
   a. Use the averaged weekly or bi-weekly amounts to convert weekly or bi-weekly income to a monthly equivalent;
   b. Use the averaged monthly or semi-monthly amounts to project monthly income; and
   c. Use the averaged hours worked and multiply the average by the current rate of pay. If there is a change in the rate of pay, use the new rate of pay when calculating projected income under subsection (A).

C. Prorated income.
1. Description. Prorated income evenly distributes a person's income over the period the income is intended to cover to calculate a monthly equivalent.
2. Calculation. To prorate income, the Administration or its designee shall divide the total amount of the person's income received during the period by the number of months that the income is intended to cover.

D. Converted income.

1. Description. Converted income is income received weekly or biweekly that is changed to a monthly equivalent.
2. Calculation.
   a. The Administration or its designee shall average the weekly or bi-weekly income amounts before converting to the monthly equivalent if the person's past income fluctuates and the fluctuation is expected to recur.
   b. To convert income paid weekly to a monthly equivalent, the Administration or its designee shall multiply the weekly average by 4.3 weeks.
   c. To convert income paid bi-weekly to a monthly equivalent, the Administration or its designee shall multiply the bi-weekly average by 2.15 weeks.

E. Unconverted income.
1. Description. Unconverted income is the actual amount of income received or projected to be received during a month.
2. Calculation. The Administration or its designee shall sum the actual amount of income received or projected to be received during a month.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1423. Calculations and Use of Methods Listed in R9-22-1422 Based on Frequency of Income

A. Monthly income. If otherwise countable income is received monthly or in a lump sum, the Administration or its designee shall use the unconverted method for calculating monthly income.
1. Lump sum means a nonrecurring payment that serves as a complete payment.
2. Lump sum payments include but are not limited to: rebates or credits; inheritances; insurance settlements; and payments for prior months from such sources as Social Security, Railroad Retirement, or other benefits.
3. A lump sum payment may include a portion intended for the current month.

B. Weekly income. If income is received weekly, the Administration or its designee shall convert the income to a monthly equivalent under R9-22-1422(D).

C. Bi-weekly income. If income is received bi-weekly, the Administration or its designee shall convert the income to a monthly equivalent under R9-22-1422(D).

D. Semi-monthly or daily income. If income is received semi-monthly or daily, the Administration or its designee shall use the unconverted method for calculating monthly income under R9-22-1422(E).

E. Bimonthly, quarterly, semi-annual, or annual income. If income is received bimonthly, quarterly, semi-annually, or annually, the Administration or its designee shall prorate the income received or projected to be received under R9-22-1422(C).

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1424. Use of Methods Listed in R9-22-1423 Based on Type of Income

A. New income.
1. Description. New income is income received from a new source during the first calendar month that the income is received from the source.
2. Calculating monthly income.
   a. If a full month's income is received, the Administration or its designee shall use the appropriate method described in R9-22-1423 to calculate the monthly income.
   b. If less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.

B. Terminated income.
1. Terminated income is income received during the last calendar month when no more income is expected to be received from that source.
2. Calculating monthly income.
   a. If a full month's income is received, the Administration or its designee shall use the appropriate method described in R9-22-1423 to calculate the monthly income.
   b. If less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.

C. Break in income.
1. Description. A break in income is a break in established frequency of income of one calendar month or more.
2. Calculating monthly income.
   a. If a full month's income is received, the Administration or its designee shall use the appropriate method described in R9-22-1423 to calculate the monthly income.
   b. If less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.

D. Contract or regular seasonal income.
1. Descriptions.
   a. Contract income is income a person earns under a contract that specifies a length of time the contract covers, the amount of income to be paid, and the frequency of payment.
   b. Regular seasonal income is income that fluctuates based on season or is only received during a certain season, and can reasonably be anticipated based on history or other verification.
2. Calculating monthly income.
   a. When the contract or regular seasonal income will not fluctuate over the 12-month period beginning with the month the application or renewal is submitted, the Administration or its designee shall use the appropriate income calculation method in R9-22-1423 for the frequency of receipt.

b. When the contract or regular seasonal income is anticipated to fluctuate over the 12-month period beginning with the month the application or renewal is submitted, the Administration or its designee shall calculate the monthly income as follows:
   i. For a one-time contract that ends between the month the application or renewal is submitted and the end of the calendar year, divide the income that will be received from the application or renewal month through the end of the calendar year by the number of months in that period to get a monthly equivalent;
   ii. For contracts that extend into the next calendar year, contracts that are anticipated to be renewed and regular seasonal income, the Administration or its designee shall divide the income that will be received in the 12-month period beginning with the application or renewal month by 12 to get the monthly equivalent.

E. Unusual variation in the amount of income.
1. Description. Unusual variation is an amount of income that is different from the established amount received and is not projected to continue or recur.
2. Calculating monthly income.
   a. When calculating income for the month in which an unusual variation in income occurs, the Administration or its designee shall include the unusual variation in the income calculation.
   b. When an unusual variation in income occurs during the month, the Administration or its designee shall use the converted method for calculating monthly income if income is received weekly or bi-weekly.
   c. When projecting income for the months following the month in which the unusual variation occurs, the Administration or its designee shall exclude the unusual variation in income from the income calculation.

F. Self-employment income.
1. Description. Self-employment income is income a person earns from the person's own trade or business less allowable expenses.
2. Calculating monthly income. The Administration or its designee shall prorate the income under R9-22-1422.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1425. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1426. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1427. Eligibility Under MAGI

A. Caretaker Relatives. An individual is eligible for AHCCCS medical coverage as a Caretaker Relative when the individual meets the following requirements:
1. Is a caretaker relative as defined in R9-22-1401.
2. The total countable income under R9-22-1420(B) does not exceed 106 percent of the FPL for the number of people in the MAGI income group.

B. Continued medical coverage.
1. A caretaker relative eligible under subsection (A) and all dependent children eligible under subsection (D) in the caretaker relative's MAGI income group are entitled to continued AHCCCS coverage for up to 12 months if eligible under subsection (B)(1)(c)(i) and up to four months if eligible under subsection (B)(1)(c)(ii) if the MAGI income group's income exceeds the limit for the income group's size and the following conditions are met:
   a. The caretaker relative still lives with a dependent child;
   b. A caretaker relative in the income group received AHCCCS medical coverage under this Section for three calendar months out of the most recent six months; and
   c. The loss of AHCCCS coverage under this Section is due to:
      i. Increased earned income of a caretaker relative, or
      ii. Increased spousal support.
2. An applicant may be added to the continued medical coverage under subsection (B)(1), if the applicant did not reside in the household at the time continued medical coverage under this Section was determined and the applicant is:
   a. The spouse or dependent child of a caretaker relative receiving continued medical coverage, or
   b. The parent of a dependent child who is receiving continued medical coverage.

C. Pregnant Women. A pregnant woman is eligible for AHCCCS medical coverage when the total countable income under R9-22-1420(B) does not exceed 156 percent of the FPL for the number of people in the MAGI income group. A pregnant woman who applies for AHCCCS medical coverage during the pregnancy or postpartum period and is determined eligible, remains eligible throughout the postpartum period. The postpartum period begins the day the pregnancy terminates and ends the last day of the month in which the 60th day following pregnancy termination occurs.

D. Children. A child less than 19 years of age is eligible for AHCCCS medical coverage when the total countable income under

R9-22-1420(B) does not exceed the following percentage of the FPL for the number of people in the MAGI income group:
1. 147 percent for a child under one year of age,
2. 141 percent for a child age one through five years of age, or
3. 133 percent for all other persons.

E. Adults. An individual is eligible for AHCCCS medical coverage when the individual meets the following eligibility requirements:
1. Is 19 years of age or older but less than 65 years of age;
2. Is not pregnant;
3. Is not eligible for AHCCCS Medical Coverage under any other coverage group listed in 42 U.S.C. 1396a(a)(10)(A)(i);
4. Is not entitled to or enrolled for Medicare benefits under Part A or Part B;
5. The total countable income under R9-22-1420(B) does not exceed 133 percent of the FPL for the number of people in the MAGI income group; and
6. When the individual is a caretaker relative, but has income exceeding the limit in subsection (A)(2), each child under age 19 living with the individual is receiving AHCCCS medical coverage or KidsCare, or is enrolled in minimum essential coverage as defined in 42 CFR 435.4.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Section R9-22-1427 repealed; new Section R9-22-1427 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1428. Postpartum Extended Eligibility

A. Eligibility for 12-months postpartum coverage. Individuals who applied and were determined eligible while pregnant, including prior quarter months under R9-22-303(A), remain eligible through the last day of the month in which a 12-month postpartum period, beginning on the last day of the pregnancy, ends.

B. Copayments during the Postpartum Extended Eligibility period. Individuals eligible under this section are subject to copayments after the end of the 60-day postpartum period described in R9-22-1427.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1). New Section made by final rulemaking at 29 A.A.R. 1866 (August 25, 2023), with an immediate effective date of August 1, 2023 (Supp. 23-3).

R9-22-1429. Eligibility for a Newborn

A child born to a mother eligible for and receiving medical coverage under this Article, Article 15 of the Chapter, or 9 A.A.C. 28, is automatically eligible for AHCCCS medical coverage for a period not to exceed 12 months. Automatic eligibility begins on the child's date of birth and ends with the last day of the month in which the child turns age one.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1430. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1431. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 2633, effective July 10, 2007 (Supp. 07-3). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1). Repealed by final rulemaking at 21 A.A.R. 1241, effective September 5, 2015 (Supp. 15-3).

R9-22-1432. Young Adult Transitional Insurance

An individual is eligible for AHCCCS medical coverage when the individual meets all of the following eligibility requirements:
1. Is 18 through 25 years of age;
2. Was in the custody of the Department of Economic Security under A.R.S. Title 8, Chapter 5 or Chapter 10 on the individual's 18th birthday;
3. Was eligible for and receiving AHCCCS Medical Coverage on the individual's 18th birthday; and
4. Is not eligible for AHCCCS Medical Coverage under 42 U.S.C. 1396a(a)(10)(A)(i)(I) - (VII).

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192,

with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1433. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1434. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Section repealed by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4).

R9-22-1435. Eligibility for a Person With Medical Expenses Whose Income is Over 100 Percent FPL

An applicant who is not eligible for AHCCCS medical coverage due to excess income may become AHCCCS eligible by deducting medical expenses from the applicant's income. This coverage is called Medical Expense Deduction (MED).

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1436. MED Family Unit

A. For the purpose of this Section, a child is an unmarried person under age 18.

B. The Department shall consider each of the following to be a family when living together:
1. A parent and the parent's children;
2. A married couple without children;
3. A married couple and the children of either or both spouses;
4. Unmarried parents who live with at least one child in common, and the parents' other children, whether in common or not; and
5. A person without children.

C. If an applicant is pregnant, the family unit includes the number of unborn children.

D. A child of the children included in subsections (B)(1), (B)(3), or (B)(4) is considered part of the family unit when living together.

E. The Department shall not include a SSI-cash recipient in the MED family unit even if the SSI-cash recipient is a parent, spouse, or child.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1437. MED Income Eligibility Requirements

A. Income exclusions. The exclusions in R9-22-1420(C) apply to the MED family unit.

B. Income standard.
1. The Department shall divide the annual FPL for the MED family unit that is in effect during each month of the income period by 12 to determine the monthly FPL.
2. The Department shall add the monthly FPLs for the income period and multiply the resulting amount by 40 percent.
3. Changes to the annual FPL are implemented in April of each year.

C. Income period. The income period is the month of application and the next two months. The Department shall add together the three months' income to establish the MED family unit's income amount.

D. Medical expense deduction period. The medical expense deduction period is a three-month period consisting of:
1. For a new application, the month before the application month, the month of application, and month following the application month; or
2. For a MED eligibility review, the last month of the prior MED eligibility period and the following two months.

E. The Department shall calculate the amount of countable monthly income as follows:
1. Subtract a $90 cost of employment allowance from the gross amount of earned income for each person whose earned income is counted;
2. Disregard from the remaining earned income an amount billed by the provider for the care of each dependent child under age 18 or incapacitated adult member of the MED family unit if the care is for the purpose of allowing the person to work. If more than one person in the household is responsible for and billed for the care of a dependent child, the disregard may be split between the wage earners if splitting the disregard is to the benefit of the family, but shall not exceed the maximum disregards as follows:
   a. A maximum of $200 for a child under age two and $175 for other dependents for a wage-earner employed full-time (86 or more hours per month); and
   b. A maximum of $100 for a child under age two, and $88 for other dependents for a wage earner employed part-time (less than 86 hours a month);
3. Add the remaining earned income for each MED family member to the unearned income of all MED family members;
4. Compare the MED family's unit countable income amount to the income standard in subsection (B). The difference is the amount of medical expenses the family shall incur during the medical expense deduction period to become eligible;
5. Subtract allowable medical expense deductions that were incurred by:
   a. A member of the MED family unit;
   b. A deceased spouse or minor child of a MED family unit if this person would have been a member of the MED unit during the MED expense deduction period;

c. A person who was a minor child of a MED family unit member when the expense was incurred but who is no longer a minor child; or
d. A minor child, including a child who is a runaway, who left home before the date of application to live with someone other than a parent; and
6. Compare the net MED family income to the income standard listed in subsection (B).

F. The family is eligible if the net income in subsection (E)(6) does not exceed the income standard in subsection (B).

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1438. MED Resource Eligibility Requirements

A. Including countable resources. The Department shall include the resources not excluded that belong to and are available to members of the family of a qualified alien under A.R.S. § 36-2903.03 and the sponsor and sponsor's spouse of a person who is a qualified alien.

B. Ownership and availability. The Department shall evaluate the ownership of resources to determine the availability of resources to a person listed in subsection (A).
1. Jointly owned resources with ownership records containing the words "and" or "and/or" between the owners' names are available to each owner except if one of the owners refuses to sell. A consent to sale is not required if all owners are members of the MED family unit.
2. Jointly owned resources with ownership records containing the word "or" between the owners' names are presumed to be available in full to each owner. The applicant or member may rebut the presumption by providing clear and convincing evidence of intent to establish a different type of ownership. If the presumption is rebutted, the resource is available to the owners:
   a. Consistent with the intent of the owners, or
   b. Based on each owner's proportionate net contribution if there is not clear and convincing evidence of a different allocation.
3. The Department shall establish availability of a trust under 42 U.S.C. 1396p(d)(4)(A) or (C).

C. Unavailability. The Department shall consider the following resources unavailable:
1. Property subject to spendthrift restriction, such as:
   a. Accounts established by the SSA, Veteran's Administration, or similar sources that mandate that the funds in the account be used for the benefit of a person not residing with the MED family unit; or
   b. Trusts established by a will or funded solely by the income and resources of someone other than a member of the MED family unit.
2. A resource being disputed in a divorce proceeding or probate matter;
3. Real property located on a Native American reservation;
4. A resource held by a conservator to the extent court-imposed restrictions make the resource unavailable to the applicant, member, or member of the family unit for:
   a. Medical care,
   b. Food,
   c. Clothing, or
   d. Shelter.

D. Resource exclusion. The Department shall exclude the following resources from the calculation of resources under subsection (E):
1. One burial plot for each person listed in R9-22-1436;
2. Household furnishings and personal items that are necessary for day-to-day living;
3. Up to $1500 of the value of one prepaid funeral plan for each person listed in R9-22-1436 that specifically covers only funeral-related expenses as evidenced by a written contract;
4. The value of one motor vehicle regularly used for transportation. If the MED family unit owns more than one vehicle, the exclusion is applied to the vehicle with the highest equity value;
5. The value of a vehicle used to earn income and not used simply for transportation to and from employment;
6. The value of a vehicle in which a SSI-cash recipient has an ownership interest; and
7. The value of any vehicle used for medical treatment, employment, or transportation of a SSI-cash disabled child, and that is excluded by SSI for that reason.
8. Funds set aside in an Individual Development Account under 6 A.A.C. 12, Article 4; and
9. Any other resource specifically excluded by federal law.

E. Calculation of resources. The Department shall determine the value of all household resources as follows:
1. Calculate the total amount of countable liquid resources;
2. Calculate the equity value of each countable non-liquid resource. The Department shall determine the equity value of a countable non-liquid resource by subtracting the amount of valid encumbrances on that resource from:
   a. The market value of real property if there is no assessor's evaluation of the property,
   b. The market value of real property if the assessor's value of the real property does not include the value of permanent structures on that property,
   c. The assessor's full cash value if subsections (E)(2)(a) and (E)(2)(b) do not apply, and
   d. The market value of a non-liquid resource that is not real property;
3. Not assign an equity value to a resource that is less than zero; and
4. Determine the MED family unit's resources by adding the totals determined in subsections (1) and (2).

F. Resource standard to be eligible for MED. A person is not eligible for MED if the resources determined in subsection (E) exceed $100,000 or if more than $5,000 are liquid resources.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1439. MED Effective Date of Eligibility

A. A MED family unit is eligible on the day the income and resource eligibility requirements are met but no earlier than the first day of the month of application. If the family unit meets the income requirements in the application month but does not meet the resource limit until the following month, the family unit's effective date of eligibility is the first day of the month following the month of application.

B. The Department shall adjust the effective date of eligibility under subsection (A) to an earlier date if:
1. A member presents verification of additional allowable medical expenses incurred on an earlier date during the medical expense deduction period that allow the member to meet the income requirements, and
2. The member presents the verification within 60 days of approval of eligibility under this Section.

C. The Department shall not adjust an effective date of eligibility more than one time per application.

D. The Department shall adjust the effective date no later than 30 days after the end of the 60-day period under subsection (B)(2).

E. The Department shall deny an application and provide the applicant a denial notice when the applicant does not meet the MED requirements under this Article during the month of application or the month following the month of application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1440. MED Eligibility Period

The Department shall approve eligibility for six months. Changes in circumstances do not affect eligibility for the first three months.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1441. Eligibility Appeals

A. Adverse actions. An applicant or member may appeal by requesting a hearing from the Department concerning any of the following adverse actions:

1. Complete or partial denial of eligibility under R9-22-1413;
2. Suspension, termination, or reduction of AHCCCS medical coverage under R9-22-1415;
3. Delay in the eligibility determination beyond the timeframes under this Article;
4. The imposition of or increase in a premium or copayment; or
5. The effective date of eligibility.

B. Notice of Adverse Action. The Department shall personally deliver or send, by regular mail, a Notice of Adverse Action to the person affected by the action. For the purpose of this Section, the date of the Notice of Adverse Action shall be the date of personal delivery to the applicant or the postmark date, if mailed.

C. Automatic change and hearing rights.

1. An applicant or a member is not entitled to a hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients.
2. An applicant or a member is entitled to a hearing if a federal or state law requires an automatic change and the applicant or member timely files an appeal that alleges a misapplication of the facts to the law.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1442. Cessation of MED Coverage

The Department shall not approve any individual or family who has applied on or after May 1, 2011 as eligible for MED coverage. With respect to any applications that are pending as of May 1, 2011, the Department shall not approve any individual or family as eligible for MED coverage who has not met all eligibility requirements prior to May 1, 2011.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 1028, effective May 1, 2011 (Supp. 11-2).

R9-22-1443. Repealed

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 1345, effective July 8, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 2624, effective July 8, 2011 (Supp. 11-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

ARTICLE 15. AHCCCS MEDICAL COVERAGE FOR PEOPLE WHO ARE AGED, BLIND, OR DISABLED

R9-22-1501. General Information

A. General. The Administration shall determine eligibility for AHCCCS medical coverage for the following applicants or members using the eligibility criteria and requirements in this Article and Article 3:

1. A person who is aged, blind, or disabled and does not receive SSI cash; and
2. A person terminated from the SSI cash program under R9-22-1505.

B. Definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

"Aged" means a person who is 65 years of age or older as specified in 42 U.S.C. 1382c(a)(1)(A).

"Blind" means a person who has been determined blind by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(2) and 42 CFR 435.530 as of October 1, 2012, which are incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW Washington, DC, 20401. This incorporated by reference contains no future editions or amendments.

"Disabled" means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E) and 42 CFR 435.540 as of October 1, 2012, which are incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

C. Eligibility effective date.

1. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
2. The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.
3. The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 23, effective December 9, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.

3. A copayment of ten dollars for each urgent care visit.

4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

36-2901. Definitions

In this article, unless the context otherwise requires:

1. "Administration" means the Arizona health care cost containment system administration.

2. "Administrator" means the administrator of the Arizona health care cost containment system.

3. "Contractor" means a person or entity that has a prepaid capitated contract with the administration pursuant to section 36-2904 or chapter 34 of this title to provide health care to members under this article or persons under chapter 34 of this title either directly or through subcontracts with providers.

4. "Department" means the department of economic security.

5. "Director" means the director of the Arizona health care cost containment system administration.

6. "Eligible person" means any person who is:

(a) Any of the following:

(i) Defined as mandatorily or optionally eligible pursuant to title XIX of the social security act as authorized by the state plan.

(ii) Defined in title XIX of the social security act as an eligible pregnant woman or a woman who is less than one year postpartum with a family income that does not exceed one hundred fifty percent of the federal poverty guidelines, as a child under the age of six years and whose family income does not exceed one hundred thirty-three percent of the federal poverty guidelines or as children who have not attained nineteen years of age and whose family income does not exceed one hundred thirty-three percent of the federal poverty guidelines.

(iii) Under twenty-six years of age and who was in the custody of the department of child safety pursuant to title 8, chapter 4 when the person became eighteen years of age.

(iv) Defined as eligible pursuant to section 36-2901.01.

(v) Defined as eligible pursuant to section 36-2901.04.

(vi) Defined as eligible pursuant to section 36-2901.07.

(b) A full-time officer or employee of this state or of a city, town or school district of this state or other person who is eligible for hospitalization and medical care under title 38, chapter 4, article 4.

(c) A full-time officer or employee of any county in this state or other persons authorized by the county to participate in county medical care and hospitalization programs if the county in which such officer or employee is employed has authorized participation in the system by resolution of the county board of supervisors.

(d) An employee of a business within this state.

(e) A dependent of an officer or employee who is participating in the system.

(f) Not enrolled in the Arizona long-term care system pursuant to article 2 of this chapter.

(g) Defined as eligible pursuant to section 1902(a)(10)(A)(ii)(XV) and (XVI) of title XIX of the social security act and who meets the income requirements of section 36-2929.

7. "Graduate medical education" means a program, including an approved fellowship, that prepares a physician for the independent practice of medicine by providing didactic and clinical education in a medical discipline to a

medical student who has completed a recognized undergraduate medical education program.

8. "Malice" means evil intent and outrageous, oppressive or intolerable conduct that creates a substantial risk of tremendous harm to others.

9. "Member" means an eligible person who enrolls in the system.

10. "Modified adjusted gross income" has the same meaning prescribed in 42 United States Code section 1396a(e)(14).

11. "Noncontracting provider" means a person who provides health care to members pursuant to this article but not pursuant to a subcontract with a contractor.

12. "Physician" means a person who is licensed pursuant to title 32, chapter 13 or 17.

13. "Prepaid capitated" means a mode of payment by which a health care contractor directly delivers health care services for the duration of a contract to a maximum specified number of members based on a fixed rate per member notwithstanding:

(a) The actual number of members who receive care from the contractor.

(b) The amount of health care services provided to any member.

14. "Primary care physician" means a physician who is a family practitioner, general practitioner, pediatrician, general internist, or obstetrician or gynecologist.

15. "Primary care practitioner" means a nurse practitioner or certified nurse midwife who is certified pursuant to title 32, chapter 15 or a physician assistant who is licensed pursuant to title 32, chapter 25. This paragraph does not expand the scope of practice for nurse practitioners or certified nurse midwives as defined pursuant to title 32, chapter 15 or for physician assistants as defined pursuant to title 32, chapter 25.

16. "Regional behavioral health authority" has the same meaning prescribed in section 36-3401.

17. "Section 1115 waiver" means the research and demonstration waiver granted by the United States department of health and human services.

18. "Special health care district" means a special health care district organized pursuant to title 48, chapter 31.

19. "State plan" has the same meaning prescribed in section 36-2931.

20. "System" means the Arizona health care cost containment system established by this article.

D-6.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18 Chapter 13 Article 3

Amend: R18-13-308

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: **October 21, 2024**

SUBJECT: **Arizona Department of Environmental Quality (ADEQ)**
Title 18, Chapter 13, Article 3

Amend: R18-13-308

Summary:

This regular rulemaking by the Arizona Department of Environmental Quality (Department) seeks to amend one (1) rule in Title 18, Chapter 13, Article 3 regarding Solid Waste Management, specifically, Refuse and other Objectionable Wastes. This rulemaking seeks to add a definition for collection agency, simplify the process by allowing counties to grant a variance without state involvement, allow a county to request the Department to assume variance functions, and allow counties to designate the relevant county department to assume variance functions.

The proposed rule amendment did not arise from a previous Five-Year Review Report (5YRR), and the proposed rule appears to be the culmination of years-long discussions with stakeholders.

1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

The Department cites both general and specific statutory authority.

2. Do the rules establish a new fee or contain a fee increase?

The amended rule does not increase any existing fees or create a new fee.

3. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?

The Department stated in the preamble that it reviewed a 2017 Maricopa Association of Governments (MAG) Solid Waste regional study. This study involved a survey of 27 MAG member agencies to identify and assess solid waste best practices being implemented. The Department found that there is nothing to indicate the state reducing the minimum collection frequency requirement from twice weekly to once weekly would have an adverse impact on solid waste best practices of local communities.

The MAG study can be found here:
https://azmag.gov/Portals/0/Documents/MagContent/Solid-Waste-Best-Practices-Report-2017-update-FINAL.pdf.

4. Summary of the agency's economic impact analysis:

This rule reduces the current statewide frequency of collection requirement for garbage from twice a week to once a week and removes ADEQ from the variance procedure to allow for collection less than once a week. This rule is intended to eliminate unnecessary duplicative effort between the state and local governments and establish a more appropriate minimum frequency for collection.

Stakeholders for this rulemaking include all 15 counties within the state, local municipalities, including cities and towns, local regulatory agencies or health departments, entities operating as collection agencies offering collection or transportation of garbage, and the general public. The stakeholders most directly affected by these rule changes are most likely to be those counties with existing frequency of collection variances approved with ADEQ and collection agencies operating in jurisdictions adhering to the current twice weekly frequency of collection minimum that would change to the new once weekly minimum following this rule. In general, ADEQ does not anticipate any appreciable costs to stakeholders as a result of this rulemaking.

5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

ADEQ determined that this rulemaking is the least intrusive and costly means possible to achieve the same objectives.

6. What are the economic impacts on stakeholders?

ADEQ does not anticipate any appreciable costs to itself or political subdivisions, and ADEQ anticipates no appreciable impact on public employment, private employment, and state revenues. If a county currently follows the minimum collection frequency of twice weekly under the current rule and elects to then follow the new minimum collection frequency of once weekly under the rule, this may impact operations of a business that is employed as a collection agency for the county. However, ADEQ has received no indication that the described change to collection frequency and corresponding business impact will result from this rule change. As such, ADEQ does not anticipate appreciable costs to businesses directly affected by the implementation and enforcement of this rule.

7. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?

No, the final rule is not a substantial change from the proposed rules.

8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

The Department stated that one supportive verbal comment was received during a hearing, but no written comments were received during the comment period. The Department provided a transcript of the virtual meeting at which the supportive comment was made (*See* Public Hearing Transcript, Pg. 8 at 17:46).

Council staff received a written comment on November 19, 2024 regarding the proposed rule, and the comment is attached in the following packet for the Council's review.

9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department stated that the rule does not require a permit or license that must comply with A.R.S. § 41-1037.

10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department indicated that the rule is not more stringent than federal law, as there is no applicable federal law governing garbage collection.

11. Conclusion

This regular rulemaking by the Department seeks to amend one (1) rule in Title 18, Chapter 13, Article 3 regarding statewide requirements for garbage collection. The proposed rule amendment did not arise from a previous 5YRR, and the proposed rule appears to be the culmination of years-long discussions with stakeholders. The

amendment seeks to add a definition for collection agency, simplify the collection process by allowing counties to grant a variance without state involvement, allow a county to request the Department to assume variance functions, and allow counties to designate the relevant county department to assume variance functions.

The Department seeks a standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

August 30, 2024

Jessica Klein, Chairperson
Governor's Regulatory Review Council
100 N. 15th Ave., suite 302
Phoenix, AZ 85007

Re: Rulemaking for Title 18. Environmental Quality, Chapter 13. Department of Environmental Quality – Solid Waste Management, Article 3.

Dear Chairperson Klein:

The Arizona Department of Environmental Quality (ADEQ) hereby submits a regular rulemaking proposing changes to Arizona Administrative Code (A.A.C) R18-13-308 to the Governor's Regulatory Review Council (GRRC) for its consideration and approval. R18-13-308 establishes the state minimum frequency of collection for garbage and refuse, as well as a variance process to deviate from this minimum.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

I. Information Required by A.A.C. R1-6-201(A)(1)

- The public record closed for the rule on June 21, 2024 at 5:00 p.m.
- This regular rulemaking does not relate to a five-year review report.
- This regular rulemaking does not establish a new fee and does not contain a fee increase.
- An immediate effective date is not requested for the rule under A.R.S. § 41-1032.
- The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
- No new full-time employees are necessary to implement or enforce the rule.
- A list of documents enclosed under A.A.C. R1-6-201(A)(2)-(8), which are attached as electronic copies:
    - The Notice of Final Rulemaking (NFRM), including the preamble, table of contents, and text of the rule.
    - The economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055.

- ADEQ did not receive any written comments on the Notice of Proposed Rulemaking (NPRM). A public comment was received at the June 20, 2024 public hearing on the NPRM; therefore, the transcript of June 20, 2024 public hearing is included in this submittal.
- ADEQ received no analysis regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states; therefore, no such analysis is included in this submittal.
- The rule amended by this rulemaking does not incorporate materials by reference; therefore, no such materials are included.
- One electronic copy of each of the following is enclosed: the general and specific statutes authorizing the rule, including relevant statutory definitions: A.R.S. §§ 49-104, 49-761(A) and (I).
- Defined terms in A.A.C. R18-13-302, which are referred to in this rule.

Thank you for your timely review and approval. Please contact myself or Matt Rippentrop, Rule Writer, Waste Programs Division, 602-771-4329 or rippentrop.matt@azdeq.gov, if you have any questions.

Sincerely,

Karen Peters
Deputy Director
Arizona Department of Environmental Quality

Attachments

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY

SOLID WASTE MANAGEMENT

PREAMBLE

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

August 20, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R18-13-308	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. § 49-104

Implementing statute: A.R.S. § 49-761(A) and A.R.S. § 49-761(I)

4. The effective date of the rule:

This rule shall become effective 60 days 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 (to be filled in by *Register* editor).

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):

Not applicable.

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: 29 A.A.R. 3537, Issue Date: November 10, 2023, Issue Number: 45, File number: R23-222

Notice of Proposed Rulemaking: 30 A.A.R. 1006, Issue Date: May 17, 2024, Issue Number: 20, File number: R24-82

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

Name: Matt Rippentrop

Title: Rule Writer

Division: Waste Programs Division

Address: Department of Environmental Quality

Waste Program Division
1110 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 771-4329

Email: rippentrop.matt@azdeq.gov

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

Summary: This rule reduces the current statewide frequency of collection requirement for garbage from twice a week to once a week. This rule retains the variance procedure to allow for collection less than once a week and simplifies the process by allowing counties to grant a variance without state involvement. Other changes include providing a definition of collection agency, allowing a county to request ADEQ to assume variance functions, and allowing counties to designate the relevant county department to assume variance functions.

Background: Since 1962, Arizona has had a statewide rule that garbage (or refuse) has to be collected twice a week. This rule was one of several Department of Health Services (DHS) rules adopted by the State Board of Health to control potential health and nuisance issues that had arisen in the absence of any rules. In 1976, a variance from the twice weekly requirement was added to allow some flexibility and to avoid unnecessary expense. In 1987, ADEQ inherited these DHS rules. Under the current variance program, collection agencies may be authorized to deviate from the twice-weekly collection requirement to a once-weekly collection upon approval and subsequent submittal of a collection entity plan by the local health department to ADEQ. To receive and maintain a variance, the plan must demonstrate the variance would not create a public health nuisance or other vector related issues.

Rule scope and explanation. ADEQ has spent significant time considering the appropriate scope of this rule, including potential recycling or diversion targets. This includes several stakeholder meetings. Questions from and discussion with the public have included impacts of a change to current collection rates, implications for current local waste management plans, and the effect on recycling within the state.

Collection of residential and commercial garbage is such a commonplace activity throughout Arizona as well as the United States that it is often taken for granted and its significance ignored. In Arizona, much of what is thrown away ends up in landfills. Over the past several decades, recycling options have become more popular. Separate recycling collections were employed taking advantage of the ease with which a second garbage collection could be avoided. Initially, this rulemaking was undertaken with the intent to strengthen diversion

programs and recycling within the state. There was concern expressed that the current variance process was overly cumbersome and subject to revocation without condition, resulting in a stifling of recycling and diversion efforts within the state. ADEQ began considering and soliciting public feedback on two options. The first option was to change the minimum frequency of collection required by the state from twice weekly to once weekly. The second option was to develop a secondary variance process based on diversion metrics which would be more secure against revocation with the intent of encouraging recycling and diversion.

In rounds of discussions with stakeholders, counties and municipalities expressed being in favor of a minimum frequency of collection of once weekly. However, while diversion and recycling efforts are important components to many local waste management programs, a secondary diversion variance like the one initially proposed was determined to be overly complex. There were concerns raised on implementation and proper tracking. In rounds of discussion and further consideration, it became clear any successful recycling and diversion initiatives would require rule changes; agency and political subdivision investment; and public participation that was beyond the scope of any change to the frequency of collection. Further, recycling's success is dependent on market rates for recycled commodities and consumer participation in sorting recyclables. To ensure a successful recycling or diversion program, all of these components must be addressed, which cannot be accomplished by amending R18-13-308. As ADEQ explored various ideas related to this rule, it became clear that whatever transformations to the frequency of collection rule could be implemented, R18-13-308 was not the appropriate tool to improve recycling in Arizona. Ultimately, ADEQ determined it appropriate to keep the scope of this rule narrowed to streamlining the state minimum for the frequency of collection, which includes minimizing unnecessary duplicate state involvement in the variance process.

This rule reduces the state collection requirement to once a week, lessening the need to obtain a variance. Based on the information at hand, there is no indication that twice weekly collection is necessary to prevent vectors, hazards, or other public health nuisances. Several of Arizona's neighboring states, including New Mexico, Nevada, and California, require collection once weekly by state rule, with local municipalities maintaining the ability to require a higher collection rate. No reported problems with vectors or excessive waste accumulation has occurred. The rule also retains, but simplifies, the variance process by allowing counties to grant a variance without state involvement. ADEQ has no record of ever denying or revoking a variance.

Further, this rule does not change the authority of political subdivisions to set collection rates or implement local waste management plans tailored to their unique needs and circumstances. Counties and local jurisdictions continue to have the discretion to set their frequency schedule to more than once weekly without the need for a variance or receiving approval from ADEQ. A.R.S. § 49-765 empowers counties, cities, and towns to establish regulation for collection of solid waste equal to or more stringent than those regulations promulgated by ADEQ. This rule does not impact whatever current authority exists for counties to establish

fees related to collection frequency or variances

Informal Comment: From discussions and feedback, stakeholders raised concerns with the change from a twice weekly to once weekly minimum frequency of collection requirement; namely, the potential impact on current diversion or recycling efforts within political subdivisions. Maricopa County expressed that current requirements under their collection variance include certain waste diversion and recycling elements. By changing to a once weekly minimum frequency, this variance to once weekly from twice weekly would now be redundant and diversion and recycling requirements under the variance would be lost. A related concern raised by the public as well is that currently some local collection jurisdictions substitute one of the two weekly pickups with recycling, and that a once weekly minimum frequency of collection would result in the secondary recycling pickup being canceled. ADEQ appreciates these concerns. However, recycling and waste diversion are not currently components of R18-13-308, and whatever source of authority that led to the inclusion of these components in any variance is in no way altered or diminished. As R18-13-308 sets standards only for the collection of garbage and refuse, any separate scheduled recycling collection requirements at the county or local level would not be nullified by this rule change as the source of authority for these recycling collections does not originate from R18-13-308. Further, ADEQ does not envision the terms or requirements of variance agreements, such as diversion requirements or recycling pick-up, to become invalidated or inoperable as an operation of this rule. It continues to be within the power and discretion of political subdivisions to provide for more stringent collection, including recycling collection, requirements to address the particular needs of their jurisdictions. Counties and local municipalities retain the same authority and power to establish and maintain regulations for collection of solid waste more stringent than those regulations promulgated by ADEQ, including both collection frequency and other requirements such as diversion and sanitation standards.

Another concern raised was the potential for overfill or unsanitary conditions if the minimum frequency of collection was lowered to once weekly. ADEQ does not foresee these problems resulting from the change to the minimum frequency of collection. Many cities currently with a variance only collect garbage once weekly with no reported problems. As stated above, this change to the frequency of collection does not impact or diminish the powers of counties and municipalities to enact solid waste collection regulations. Further, other existing minimums and requirements throughout Article 3, Refuse and Other Objectionable Waste, remain unchanged and in force. This includes responsibility of relevant parties to maintain sanitary conditions, requirements and standards for storage of waste to ensure sanitary conditions, vehicle use and maintenance requirements, and standards for methods of disposal. Finally, ADEQ has approved all 43 variance applications received since the implementation of the frequency of collection and variance rule. Under the variance program, once weekly collection has become the typical collection frequency throughout the state.

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:

ADEQ reviewed a 2017 Maricopa Association of Governments (MAG) Solid Waste Best Practices regional study. This study involved a survey of 27 MAG member agencies to identify and assess solid waste best practices being implemented. ADEQ found that there is nothing to indicate the state reducing the minimum collection frequency requirement from twice weekly to once weekly would have an adverse impact on solid waste best practices of local communities.

The MAG study may be found here: https://azmag.gov/Portals/0/Documents/MagContent/Solid-Waste-Best-Practices-Report-2017-update-FINAL.pdf.

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 following discussion addresses each of the elements required for an economic, small business and consumer impact statement under A.R.S. § 41-1055.

Identification of the rulemaking: This rule amends R18-13-308 to reduce the current statewide frequency of collection requirement for garbage from twice a week to once a week. This rule retains the variance procedure to allow for collection less than once a week, but removes ADEQ from the variance process by allowing counties to grant a variance to a collection agency without state involvement. A county may request that ADEQ assume the functions of granting and revoking variances.

The development and implementation of waste management plans, including collection frequency and other requirements, primarily falls under the purview of the counties and political subdivisions. This rule does not change the authority of political subdivisions to set collection rates or implement local waste management plans tailored to their unique needs and circumstances. Instead, this rule is intended to eliminate unnecessary duplicative effort between the state and local governments and establish a more appropriate minimum frequency for collection. Counties continue to have the discretion to set their frequency schedule to more than once weekly without the need for a variance or receiving approval from ADEQ. A.R.S. § 49-765 empowers counties, cities, and towns to establish regulation for collection of solid waste equal to or more stringent than those regulations promulgated by ADEQ. This rule does not impact whatever current authority exists for counties to establish

regulations and standards related to collection frequency or variances.

This rule also establishes a definition of "collection agency" for purposes of R18-13-308 and allows a county to assign variance functions to whatever county department the county believes would be the most appropriate.

Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking: Stakeholders for this rulemaking include all 15 counties within the state, local municipalities, including cities and towns, local regulatory agencies or health departments, entities operating as collection agencies offering collection or transportation of garbage, which may include local governments or commercial services, and the general public.

The stakeholders most directly affected by these rule changes are most likely to be those counties with existing frequency of collection variances approved with ADEQ and collection agencies operating in jurisdictions adhering to the current twice weekly frequency of collection minimum that would change to the new once weekly minimum following this rule.

Cost/Benefit Analysis: This cost/benefit analysis includes an analysis of the following elements pursuant to A.R.S. § 41-1055(B)(3):

- Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking: probable benefits to ADEQ by the implementation and enforcement of this rule include a reduction to waste program costs from removal of ADEQ from the variance approval process. To date, ADEQ has approved 100% of all frequency of collection variance requests it has received under the current rule, approximately 43. Removing ADEQ from variance approval allows ADEQ to reallocate the time and personnel previously conducting variance review, approval, and record maintenance for variances to other waste program operations.

  ADEQ does not anticipate appreciable costs to itself associated with the implementation or enforcement of this rule. ADEQ does not anticipate any significant costs or benefits to other state agencies associated with the implementation or enforcement of this rule.

- Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking: probable benefits to political subdivisions by the implementation and enforcement of this rule include a more

expeditious approval of frequency of collection variances for those counties that would continue to seek a variance. Under the rule, the new standardized minimum frequency of collection is once weekly. If collection of once weekly is not necessary for a particular jurisdiction to ensure no public health hazards or nuisances will exist and that fly breeding will be controlled, each additional week in delay of the approval of a variance to a more appropriate frequency of collection rate results in accumulating costs to operate collection services at that frequency. By increasing the speed at which a variance is approved, these costs can be mitigated.

Waste collection costs for political subdivisions and local jurisdictions are significant. Capital equipment maintenance and replacement represent a large portion of these costs. While cities have different policies for replacing their equipment, within the industry side-load trucks are generally replaced every seven years. Factors that drive replacement other than age are mileage, hours, and cost of repairs and maintenance. Vehicle mileage, hours of operations, and frequency of repairs will be higher the more frequently the collection vehicles must be operated. The longevity and useful life of capital equipment, such as collection vehicles, can be extended and thus associated maintenance and replacement costs reduced by counties implementing a variance for an appropriate frequency of collection rate that is reflective of local needs and circumstances. Thus, overall waste collection costs may be reduced.

ADEQ does not anticipate appreciable costs to political subdivisions by the implementation and enforcement of this rule.

- Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking: businesses directly affected by the proposed rule include any business operating as a collection agency offering garbage collection as a commercial service within a county or municipality. Counties and political subdivisions have broad discretion in establishing requirements of waste management and collection programs to fit their individualized needs. This rule is intended to eliminate duplicative effort in oversight by streamlining the variance process and establish a more reasonable minimum standard for collection frequency. This rule does not change the primary role counties and political subdivisions have in setting standards and requirements for waste management within their jurisdictions.

  If a county currently follows the minimum collection frequency of twice weekly under the current rule and elects to then follow the new minimum collection frequency of once weekly under the rule, this may impact operations of a business that is employed as a collection agency for the county. However, ADEQ has received no indication that this change to collection frequency as described and corresponding impact to a business

employed as a collection agency will result from this rule change. As such, ADEQ does not anticipate appreciable costs to businesses directly affected by the implementation and enforcement of this rule.

ADEQ finds that the benefits associated with this rule change outweigh any foreseen or anticipated costs.

General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking: This rule will lower the minimum frequency of collection from twice weekly to once weekly. Further, this rule will provide that a variance may be granted to allow for frequency of collection of less than once weekly, instead of the current variance of once weekly. These changes to collection frequency could potentially impact the employment, personnel, or equipment needs of collection agencies. However, this rule does not change or diminish other regulatory requirements concerning waste collection. Further, this rule does not change or diminish the authority of counties and local municipalities to enact more stringent regulations than those promulgated by ADEQ. As such, ADEQ estimates this rulemaking will not have an appreciable impact on public or private employment.

Probable impact of the proposed rulemaking on small businesses: Arizona law defines "small business" for the purpose of this analysis as a "concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." *See* A.R.S. § 41-1001(23). The probable impact on small businesses includes an analysis of the following elements pursuant to A.R.S. § 41-1055(B)(5):

- Identification of the small businesses subject to the rulemaking: Small businesses that may be subject to this rulemaking are those small businesses operating as collection agencies within a county or local jurisdiction that currently adheres to the twice weekly minimum collection frequency and that would change to the once weekly minimum collection frequency following this rule.

- Administrative and other costs required for compliance with the proposed rulemaking: Political subdivisions and collection agencies currently collecting twice weekly that would change to once weekly with this change to the minimum collection frequency may need to make modifications to collection scheduling and related processes, but costs to do so should be minimal.

- Description of the methods prescribed in A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method:

    - Establish less stringent compliance or reporting requirements in the rule for small

businesses. Compliance and reporting requirements are not a component of or impacted by this rulemaking.

- Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses. Compliance and reporting requirements are not a component of or impacted by this rulemaking. There are no associated schedules or deadlines regulated parties, including small businesses, are subject to under this rulemaking.

- Consolidate or simplify the rule's compliance or reporting requirements for small businesses. Compliance and reporting requirements are not a component of or impacted by this rulemaking; as such, there are no requirements to consolidate or simplify.

- Establish performance standards for small businesses to replace design or operational standards in the rule. There are no design and operation standards established by this rule.

- Exempt small businesses from any or all requirements of the rule. Maintaining a minimum collection frequency is necessary to ensure the prevention of vectors, hazards, or public health nuisances. As such, it is necessary that any collection agency that may be classified as a small business be subject to the same minimum standard as any other collection agency.

- Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking: The probable costs and benefits to private persons and consumers is described above. Probable benefits include the elimination of unnecessary duplicative effort between ADEQ and counties, allowing for the faster and more efficient implementation of variances a county may elect to pursue. Nevertheless, implementation of waste management plans primarily falls under the jurisdiction of counties and local municipalities. This rule does not change the primary role that counties and local municipalities play in the development and implementation of waste management within their jurisdictions. As such, ADEQ does not anticipate any appreciable costs to private persons and consumers.

Probable effect on state revenues: ADEQ does not anticipate this rulemaking to result in a significant impact on state revenues.

Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: This rulemaking is the least intrusive and costly means possible to achieve the same objectives.

Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data: Any data or reasoning which this

rulemaking is based on is identified in the "Rule Scope and Explanation" portion of the Notice of Final Rulemaking located in Part 7. Generally, no new data was introduced or reviewed to make these rule changes.

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

No changes were made to the rule between the proposed rulemaking and final rulemaking.

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

During the formal comment period ADEQ received one comment expressing support for the change of the minimum frequency of collection. Refer to the "Informal Comment" portion located in Part 7 above for a discussion on comments and feedback received from stakeholders prior to the formal comment period.

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:

There are no other matters prescribed by statute.

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:

Not applicable.

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:

No such analysis was submitted.

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:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY

SOLID WASTE MANAGEMENT

ARTICLE 3. REFUSE AND OTHER OBJECTIONABLE WASTES

Section

R18-13-308 Frequency of Collection; Variance

ARTICLE 3. REFUSE AND OTHER OBJECTIONABLE WASTES

R18-13-308. Frequency of Collection; Variance

A. The ~~frequency of~~ collection of garbage, refuse, rubbish, and ashes shall be in accordance with rules of the collection agency ~~but~~ except that the frequency of collection shall not be less than once per week. ~~that shown in the following schedules:~~

~~1. Garbage only -- twice weekly.~~

~~2. Refuse with garbage -- twice weekly.~~

~~3. Rubbish and ashes -- as often as necessary to prevent nuisances and fly breeding.~~

B. A variance from the required frequency of collection in subsection (A) ~~rate~~ may be granted by the county department designated by the county to approve variances to allow for ~~the~~ collection ~~of garbage~~ less than once weekly. The variance may be granted ~~by the Department of Environmental Quality~~ upon submission of an acceptable plan by the collection agency ~~approved by~~ to the designated county ~~local health~~ department demonstrating that no public health hazards or nuisances will exist and that fly breeding will be controlled by either biological, chemical, or mechanical means. The variance may be revoked whenever the ~~Department of Environmental Quality~~ designated county department determines that the circumstances warranting the variance no longer exist.

C. A county may request the Department of Environmental Quality to assume the functions of granting and revoking variances under this Section.

D. For the purposes of this Section, "collection agency" means a city, town, person, or commercial service that offers collection or transportation of garbage, refuse, rubbish, and ashes as a service.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY

SOLID WASTE MANAGEMENT

Economic, Small Business, and Consumer Impact Statement

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

Identification of the rulemaking: This rule amends R18-13-308 to reduce the current statewide frequency of collection requirement for garbage from twice a week to once a week. This rule retains the variance procedure to allow for collection less than once a week, but removes ADEQ from the variance process by allowing counties to grant a variance to a collection agency without state involvement. A county may request that ADEQ assume the functions of granting and revoking variances.

The development and implementation of waste management plans, including collection frequency and other requirements, primarily falls under the purview of the counties and political subdivisions. This rule does not change the authority of political subdivisions to set collection rates or implement local waste management plans tailored to their unique needs and circumstances. Instead, this rule is intended to eliminate unnecessary duplicative effort between the state and local governments and establish a more appropriate minimum frequency for collection. Counties continue to have the discretion to set their frequency schedule to more than once weekly without the need for a variance or receiving approval from ADEQ. A.R.S. § 49-765 empowers counties, cities, and towns to establish regulation for collection of solid waste equal to or more stringent than those regulations promulgated by ADEQ. This rule does not impact whatever current authority exists for counties to establish regulations and standards related to collection frequency or variances.

This rule also establishes a definition of "collection agency" for purposes of R18-13-308 and allows a county to assign variance functions to whatever county department the county believes would be the most appropriate.

Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking: Stakeholders for this rulemaking include all 15 counties within the state, local municipalities, including cities and towns, local regulatory agencies or health departments, entities operating as collection agencies offering collection or transportation of garbage, which may include local governments or commercial services, and the general public.

The stakeholders most directly affected by these rule changes are most likely to be those counties with existing frequency of collection variances approved with ADEQ and collection agencies operating in jurisdictions adhering to the current twice weekly frequency of collection minimum that would change to the new once weekly minimum following this rule.

Cost/Benefit Analysis: This cost/benefit analysis includes an analysis of the following elements pursuant to A.R.S. § 41-1055(B)(3):

- Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking: probable benefits to ADEQ by the implementation and enforcement of this rule include a reduction to waste program costs from removal of ADEQ from the variance approval process. To date, ADEQ has approved 100% of all frequency of collection variance requests it has received under the current rule, approximately 43. Removing ADEQ from variance approval allows ADEQ to reallocate the time and personnel previously conducting variance review, approval, and record maintenance for variances to other waste program operations.

  ADEQ does not anticipate appreciable costs to itself associated with the implementation or enforcement of this rule. ADEQ does not anticipate any significant costs or benefits to other state agencies associated with the implementation or enforcement of this rule.

- Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking: probable benefits to political subdivisions by the implementation and enforcement of this rule include a more expeditious approval of frequency of collection variances for those counties that would continue to seek a variance. Under the rule, the new standardized minimum frequency of collection is once weekly. If collection of once weekly is not necessary for a particular jurisdiction to ensure no public health hazards or nuisances will exist and that fly breeding will be controlled, each additional week in delay of the approval of a variance to a more appropriate frequency of collection rate results in accumulating costs to operate collection services at that frequency. By increasing the speed at which a variance is approved, these costs can be mitigated.

  Waste collection costs for political subdivisions and local jurisdictions are significant. Capital equipment maintenance and replacement represent a large portion of these costs. While cities have different policies for replacing their equipment, within the industry side-load trucks are generally replaced every seven years. Factors that drive replacement other than age are mileage, hours, and cost of repairs and maintenance. Vehicle mileage, hours of operations, and frequency of repairs will be higher the more frequently the collection vehicles must be operated. The longevity and useful life of capital equipment, such as collection vehicles, can be extended and thus associated maintenance and replacement costs reduced by counties implementing a variance for an appropriate frequency of collection rate that is reflective of local needs and circumstances. Thus, overall waste collection costs may be reduced.

  ADEQ does not anticipate appreciable costs to political subdivisions by the implementation and enforcement of this rule.

- Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking: businesses directly affected by the proposed rule include any business operating as a collection agency offering garbage collection as

a commercial service within a county or municipality. Counties and political subdivisions have broad discretion in establishing requirements of waste management and collection programs to fit their individualized needs. This rule is intended to eliminate duplicative effort in oversight by streamlining the variance process and establish a more reasonable minimum standard for collection frequency. This rule does not change the primary role counties and political subdivisions have in setting standards and requirements for waste management within their jurisdictions.

If a county currently follows the minimum collection frequency of twice weekly under the current rule and elects to then follow the new minimum collection frequency of once weekly under the rule, this may impact operations of a business that is employed as a collection agency for the county. However, ADEQ has received no indication that this change to collection frequency as described and corresponding impact to a business employed as a collection agency will result from this rule change. As such, ADEQ does not anticipate appreciable costs to businesses directly affected by the implementation and enforcement of this rule.

ADEQ finds that the benefits associated with this rule change outweigh any foreseen or anticipated costs.

General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking: This rule will lower the minimum frequency of collection from twice weekly to once weekly. Further, this rule will provide that a variance may be granted to allow for frequency of collection of less than once weekly, instead of the current variance of once weekly. These changes to collection frequency could potentially impact the employment, personnel, or equipment needs of collection agencies. However, this rule does not change or diminish other regulatory requirements concerning waste collection. Further, this rule does not change or diminish the authority of counties and local municipalities to enact more stringent regulations than those promulgated by ADEQ. As such, ADEQ estimates this rulemaking will not have an appreciable impact on public or private employment.

Probable impact of the proposed rulemaking on small businesses: Arizona law defines "small business" for the purpose of this analysis as a "concern, including its affiliates, which is

independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." *See* A.R.S. § 41-1001(23). The probable impact on small businesses includes an analysis of the following elements pursuant to A.R.S. § 41-1055(B)(5):

- Identification of the small businesses subject to the rulemaking: Small businesses that may be subject to this rulemaking are those small businesses operating as collection agencies within a county or local jurisdiction that currently adheres to the twice weekly minimum collection frequency and that would change to the once weekly minimum collection frequency following this rule.

- Administrative and other costs required for compliance with the proposed rulemaking: Political subdivisions and collection agencies currently collecting twice weekly that would change to once weekly with this change to the minimum collection frequency may need to make modifications to collection scheduling and related processes, but costs to do so should be minimal.

- Description of the methods prescribed in A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method:

    - Establish less stringent compliance or reporting requirements in the rule for small businesses. Compliance and reporting requirements are not a component of or impacted by this rulemaking.

    - Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses. Compliance and reporting requirements are not a component of or impacted by this rulemaking. There are no associated schedules or deadlines regulated parties, including small businesses, are subject to under this rulemaking.

    - Consolidate or simplify the rule's compliance or reporting requirements for small businesses. Compliance and reporting requirements are not a component of or impacted by this rulemaking; as such, there are no requirements to consolidate or simplify.

- Establish performance standards for small businesses to replace design or operational standards in the rule. There are no design and operation standards established by this rule.

- Exempt small businesses from any or all requirements of the rule. Maintaining a minimum collection frequency is necessary to ensure the prevention of vectors, hazards, or public health nuisances. As such, it is necessary that any collection agency that may be classified as a small business be subject to the same minimum standard as any other collection agency.

- Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking: The probable costs and benefits to private persons and consumers is described above. Probable benefits include the elimination of unnecessary duplicative effort between ADEQ and counties, allowing for the faster and more efficient implementation of variances a county may elect to pursue. Nevertheless, implementation of waste management plans primarily falls under the jurisdiction of counties and local municipalities. This rule does not change the primary role that counties and local municipalities play in the development and implementation of waste management within their jurisdictions. As such, ADEQ does not anticipate any appreciable costs to private persons and consumers.

Probable effect on state revenues: ADEQ does not anticipate this rulemaking to result in a significant impact on state revenues.

Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: This rulemaking is the least intrusive and costly means possible to achieve the same objectives.

Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data: Any data or reasoning which this rulemaking is based on is identified in the "Rule Scope and Explanation" portion of the Notice of Final Rulemaking located in Part 7. Generally, no new data was introduced or reviewed to make these rule changes.

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly

related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-761. Rulemaking authority for solid waste facilities; exemption; financial assurance; recycling facilities

A. The department shall adopt rules regarding the storage, processing, treatment and disposal of solid waste as prescribed by subsections B through M of this section. In adopting rules, the department shall consider the nature of the waste streams at the facilities to be regulated. The department shall also consider other applicable federal and state laws and rules in an effort to avoid practices or requirements that duplicate, are inconsistent with or will result in dual regulation with other applicable rules and laws. Facilities that obtain and maintain coverage under a general permit established by the department pursuant to section 49-706 are exempt from rules adopted pursuant to this section. In adopting rules for solid waste facilities, the director may include requirements for corrective actions in response to a release, as defined in section 49-281, from a solid waste facility that violates or results in a violation of any provision of this chapter, rule adopted pursuant to this chapter or solid waste facility plan approved pursuant to this chapter. These rules shall be consistent with section 49-762.08, subsection B, subsection C, paragraphs 1 and 2 and subsections D and E.

B. For purposes of administering 42 United States Code section 6945, as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference except as prescribed by paragraph 2 of this subsection. This subsection, as it applies to municipal solid waste landfills, governs if there is any conflict between this subsection and any other statute relating to solid waste. Municipal solid waste landfill facility plans submitted pursuant to section 49-762 shall comply with this subsection. In administering this subsection or in adopting or administering any rules adopted pursuant to this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained. The following apply to the department's administration of 42 United States Code section 6945 and to the department's adoption of rules for municipal solid waste landfills:

1. The department may adopt rules for municipal solid waste landfills. Rules adopted pursuant to this paragraph shall not be more stringent than or conflict with 40 C.F.R. part 258 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 258 if those standards are consistent with and not more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. Rules adopted pursuant to this paragraph are effective on the concurrence of the administrator with this state's municipal solid waste landfill program.

2. 40 C.F.R. part 258, table I is not adopted in its entirety. The department shall use aquifer water quality standards that have been adopted by the department pursuant to section 49-223 and shall use those portions of table I that are more restrictive than the standards adopted pursuant to section 49-223.

C. The department shall adopt rules for those solid waste land disposal facilities that are not municipal solid waste landfills and that are not regulated by the coal combustion residuals program established pursuant to article 11 of this chapter. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with 40 C.F.R. part 257, subparts A and B for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 257, subparts A and B if these standards are consistent with and not more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. In administering this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained in the department's rules. Aquifer protection provisions adopted pursuant to this subsection do not apply to an owner or operator of a solid waste facility if the owner or operator submits an administratively complete application for an aquifer protection permit pursuant to chapter 2, article 3 of this title before the date that the owner or operator is required to submit a solid waste facility plan.

D. The department shall adopt rules to define biohazardous medical waste and to regulate biohazardous medical waste and medical sharps to include all of the following:

1. A definition for biohazardous medical waste that includes wastes that contain material that is likely to transmit etiologic agents that have been shown to cause or contribute to increased human morbidity or mortality of

epidemiologic significance. The department shall consult with the department of health services in making this determination.

2. Reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of biohazardous medical waste and medical sharps, beginning with the placement by the generator of the waste in containers for the purpose of waste collection. The department may require payment of a fee for the licensure of a transporter of biohazardous medical waste. After July 20, 2011, the department shall establish by rule a fee for the licensure of a transporter of biohazardous medical waste, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881. In the case of self-hauling of waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules. The department shall also adopt reasonably necessary rules regarding the tracking of biohazardous medical waste and medical sharps.

E. The department may adopt reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of nonbiohazardous medical waste beginning with the placement by the generator of the waste in containers for the purpose of waste collection. In the case of self-hauling of the waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules.

F. The department shall adopt rules for the application of sludge from a wastewater treatment facility to land for use as fertilizer or beneficial soil amendment. For the purposes of this subsection, "sludge" has the same meaning as sewage sludge as defined in 40 Code of Federal Regulations section 122.2 in effect on January 1, 1998.

G. The department shall adopt rules regarding the storage, processing, treatment or disposal of solid waste at solid waste facilities that are identified in section 49-762.01. The rules shall allow the owner or operator to certify compliance with the department's statutes and rules instead of obtaining a solid waste facility plan approval. The rules shall provide that the applicant at its option may request approval of a solid waste facility plan rather than certifying compliance.

H. The department shall issue by rule best management practices for the classes of solid waste facilities set forth in section 49-762.02.

I. The department shall adopt reasonably necessary rules establishing minimum standards for storing, collecting, transporting, disposing and reclaiming solid waste, including garbage, trash, rubbish, manure and other objectionable wastes. These rules shall provide for inspecting premises, containers, processes, equipment and vehicles, and for abating as environmental nuisances any premises, containers, processes, equipment or vehicles that do not comply with the minimum standards of these rules. The rules adopted pursuant to this subsection do not apply to sites that are either regulated by section 49-762, 49-762.01 or 49-762.02 or exempted from the definition of solid waste facility in section 49-701 or from the definition of solid waste in section 49-701.01. Notwithstanding any other provision of this subsection, rules adopted pursuant to this subsection shall apply to defining environmental nuisances pursuant to section 49-141.

J. The department shall adopt rules relating to financial assurance requirements. The rules shall indicate the types of financial assurance mechanisms to be required and the content, terms and conditions of each financial mechanism, including circumstances under which the department may take action on the financial assurance mechanism for facility closure, postclosure care if necessary and corrective action for known releases. The financial assurance mechanisms shall include all of the following:

1. Surety bond.

2. Certificate of deposit.

3. Trust fund with pay-in period.

4. Letter of credit.

5. Insurance policy.

6. Certificate of self-insurance.

7. Deposit with the state treasurer.

8. Evidence of ability to meet any of the following:

(a) Corporate financial test.

(b) Local government financial test.

(c) Corporate guarantee test.

(d) Local government guarantee test.

(e) Political subdivision financial test that shall require the department to consider the entity's bond rating, income stream, assets, liabilities and assessed valuation of taxable property.

9. Multiple financial assurance mechanisms.

10. Additional financial assurance mechanisms that may be acceptable to the director.

K. The department shall adopt rules that prescribe standards to be used in determining if a site is a recycling facility.

L. The director may adopt rules that prescribe standards to be used in determining if a solid waste facility includes significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

M. The department shall adopt facility design, construction, operation, closure and postclosure maintenance rules for biosolids processing facilities and household waste composting facilities that must obtain plan approval pursuant to section 49-762.

ARTICLE 1. RESERVED

Editor's Note: Article 2, consisting of Section R18-13-201, was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit the rules to the Governor's Regulatory Review Council for review; and the Department was not required to hold public hearings on this Section (Supp. 98-3).

ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means that these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the agency was not required to hold public hearings on these rules (Supp. 98-3).

R18-13-201. Land Application of Biosolids Exemption

A. This Section applies only to biosolids as defined in R18-9-1001. The land application of biosolids, when placed on or applied to the land in full conformity with 18 A.A.C. 9, Article 10 and A.R.S. § 49-761(F), and if the site of land application has ceased to receive application of biosolids and all applicable site restrictions set by A.A.C. Title 18 Environmental Quality have been satisfied, is exempt statewide from the definition of solid waste found at A.R.S. § 49-701.01(A). This exemption applies only when the biosolids and the soil to which it has been applied remain at the site of the application.

B. This exemption does not alter or set any new standard for the soil remediation standards found at 18 A.A.C. 7, Article 2.

Historical Note

Adopted under and exemption from A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2), effective July 27, 1998 (Supp. 98-3). Amended by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-202. Coal Slurry Discharges from Pipeline Leaks Exemption

This Section applies only to coal slurry discharges onto the ground from pipeline leaks. Coal slurry discharges onto the ground from pipeline leaks are exempt statewide from the definition of solid waste prescribed in A.R.S. § 49-701.01(A) if both of the following conditions are met:

1. The discharge was the result of an accidental pipeline leak.
2. The thickness of the layer of coal slurry on the ground that resulted from the discharge is 3 inches or less.

Historical Note

New Section adopted by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3).

ARTICLE 3. REFUSE AND OTHER OBJECTIONABLE WASTES

R18-13-301. Reserved

R18-13-302. Definitions

A. "Approved" means acceptable to the Department.

B. "Ashes" means residue from the burning of any combustible material.

C. "Department" means the Department of Environmental Quality or a local health department designated by the Department of Environmental Quality.

D. "Garbage" means all animal and vegetable wastes resulting from the processing, handling, preparation, cooking, and serving of food or food materials.

E. "Manure" means animal excreta, including cleanings from barns, stables, corrals, pens, or conveyances used for stabling, transporting, or penning of animals or fowls.

F. "Person" means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership or individual.

G. "Refuse" means all putrescible and nonputrescible solid and semisolid wastes, except human excreta, but including garbage, rubbish, ashes, manure, street cleanings, dead animals, abandoned automobiles, and industrial wastes.

H. "Rubbish" means nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, waste metal, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

Historical Note

Section recodified from A.A.C. R18-8-502, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-303. Responsibility

A. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the sanitary condition of said premises, business establishment, or industry. No person shall place, deposit, or allow to be placed or deposited on his premises or on any public street, road, or alley any refuse or other objectionable waste, except in a manner described in these rules.

B. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the storage and disposal of all refuse accumulated, by a method or methods described in these rules.

C. The collection and disposal of all refuse not acceptable for collection by a collection agency is the responsibility of each occupant, business establishment, or industry where such refuse accumulates, and all such refuse shall be stored, collected, and disposed of in a manner approved by the Department.

D. All dangerous materials and substances shall, where necessary, be rendered harmless prior to collection and disposal.

Historical Note

Section recodified from A.A.C. R18-8-503, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-304. Inspection

Representatives of the Department shall make such inspections of any premises, container, process, equipment, or vehicle used for collection, storage, transportation, disposal, or reclamation or refuse as are necessary to ensure compliance with these rules.

Historical Note

Section recodified from A.A.C. R18-8-504, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-305. Collection Required

A. Where refuse collection service is available, the following refuse shall be required to be collected: Garbage, ashes, rubbish, and small dead animals which do not exceed 75 pounds in weight.

Transcript – 308 Frequency of Collection Close of Public Comment
June 20, 2024, 1:00 – 1:19 PM

0:16
Good afternoon, everyone. We're going to give it just another minute or so for folks to trickle in but we'll get started here shortly in just a few minutes.

1:27
All right, we'll go ahead and get started with this public hearing.

1:30
Okay, good afternoon everyone.

1:32
Today is Thursday, June 20 2024. The time is 101pm and I will now open this public hearing.

1:39
This is a public hearing using the web-based application GoToWebinar.

1:44
My name is Matt Rippentrop, and I have been appointed by the Director of the Arizona Department of Environmental Quality to preside as the public hearing officer at this public hearing.

1:52
This public hearing is to provide you with an opportunity to make oral comments regarding ADEQ's notice of proposed rulemaking for the frequency of collection proposed rule change.

2:03
Also representing the agency today is Terry Bair, Senior Science Specialist.

2:07
By law, this public hearing must be conducted on the record.

2:11
Therefore, the proceedings are being recorded via electronic media.

2:15
Today's public hearing will allow for discussion, questions, and comment on the proposed rules in accordance with ARS 41-1023.

2:23
The notice of proposed rule making was filed with the Arizona Secretary of State's office and was published in the Arizona Administrative Register on Friday, May 17th this year, which began the formal comment period on the proposed rule.

2:39
So before we get started, we have some housekeeping to do.

2:42

First, please stay muted while in this meeting while you're not speaking.

2:46
Feel free to put questions in the question tool as they come to you.

2:49
And to note again, this hearing is being recorded.

2:56
So for our agenda today, our agenda will comprise of a brief discussion of the proposed rule, a time for questions regarding the proposed rule, and finally, an opportunity to comment on the record regarding the rule.

3:09
Please note, only those comments made during the final opportunity to comment portion are official comments for the record, so please ensure those comments you want on the record are saved for and set at this time.

3:20
Official comments made during the opportunity to comment will be limited to five minutes.

3:28
So our projected path forward for this rule, following the close of this public comment period at close of business time tomorrow, 5 p.m., ADEQ will begin carefully considering and incorporating public comments received.

3:39
Once all comments have been considered and incorporated, ADEQ tentatively anticipates preparing and submitting the notice of final rulemaking to the Governor's Regulatory Review Council, or GERC, at the end of July.

3:53
Following the GERC study and council meetings at the end of August and beginning of September, the rule will be submitted to the Secretary of State with an anticipated effective date of November.

4:06
I will now turn the presentation over to Terry Baer for a brief presentation on the proposed rule.

4:17
Thank you, Matt. Can you hear me? Yes, we can hear you. Wonderful, sir. Next slide.

4:27
So again, taking the frequency of collection rule, you can see here that any strikeouts is a removal of language, any bold is the inclusion of new language.

4:39
And so with the proposed rule, we're looking to establish for the collection of garbage, refuse, rubbish, and ashes shall be in accordance with the of the collection agency except

that the frequency of collection shall not be less than once per week.

4:55
So this removes the twice a week component as well as the different categories that were established as you can see stricken out below. Next slide.

5:09
Additionally it established that the variance from collection may be granted by the county department that's designated to approve the variances.

5:18
Previously all variances had to go the county authority and then come to ADQ for subsequent approval.

5:25
This is removing that dual approval and is relying strictly on the approval authority of the county designated for oversight.

5:35
Additionally, the county may revoke the variance that determine if the circumstances warranted variances no longer exist. Again, this is a variance from the once-a-week collection.

5:47
Next slide.

5:53
Finally, we added in these two new paragraphs, C and D, that if a county would prefer the department to oversee functions of granting invariants, they could ask the department to do that.

6:07
And then the last one is just more of a definition clarifying that for the purpose of the section, collection agency means a city, town, person, or commercial service that offers collection of transportation of garbage, refuse, rubbish, and ashes.

6:23
Next slide.

6:27
All right.

6:27
Thank you, Terry, for that explanation of the rule.

6:30
This section of the meeting is for questions regarding the proposed rule.

6:33
If you would like to make a comment on the record regarding the proposed rule, please wait until that portion of the hearing.

6:38

We will get to you.

6:40
If you have a question, please raise your hand by clicking on the hand symbol on the webinar control panel.

6:45
Individuals will be called on in the order they join the hearing and raise their hand.

6:48
You may also submit a question using the questions tool.

6:52
Now, are there any questions regarding the proposed rule at this time?

7:06
I'm not seeing any immediate questions, but I'll give it just another moment in case people are getting their thoughts together or typing out any questions.

7:40
They can either be typed out into the question box or you can raise your hand.

7:48
We'll give it just another moment.

8:00
Looks like we have a raised hand.

8:07
Yeah, Matt. Yeah, Dave Bennett with the City of Scottsdale.

8:12
Just real quick, how many people are on today's call? Just curious. It looks like our attendee list is 26.

8:23
That are currently on the call? That is correct. Thank you, Matt. Looks like we have another question.

8:39
Ramona Hi, yes, Ramona Simpson, town of Queen Creek.

8:44
Sorry, jumped in just a couple of minutes late.

8:46
You guys went through that really fast, but I wanted to just double-check, really make sure.

8:54
So, this still allows us to submit a variance, but a variance is still going to be required by and determined by the county that you're in.

9:03

So Mayor Coppa or Purnell could decide what they want to do and we'd need to submit variances just like we're currently doing.

9:14
So we still have the ability to do that, but it's still going to require doing a variance and then how we currently do it, that we have to send information about what we're doing regarding that variance.

9:30
So that is still all kind of in place.

9:32
that really doesn't change this activity.

9:35
Is that correct?

9:40
Do we have a panelist that can speak to that question?

9:43
Yeah, happy to, Matt.

9:46
So Ramona, so yes, in short, to answer your question.

9:51
So the rule allows being revised for the department to establish the minimum frequencies to be once a week.

9:59
Now, counties may decide that based on their county needs that, once a week, may not be sufficient for preventing, you know, nuisances for that area.

10:12
And so this allowed the change in the rule for the county to establish something much more frequent.

10:17
So, for example, if Maricopa County decided that they wanted it to stay twice a week, that they could do that, and then you would submit for a variance from whatever the requirements are to them.

10:30
It really kind of takes the department out of the review part of the process, unless the county has sought for us to step in and serve in that function.

10:42
But those are the two things that have changed.

10:45
It establishes the frequency to be minimum to be once a week instead of twice a week as it was previously, but it allows the county to be more stringent, which has always been

there, but may not have been as prevalently known before.

10:59
And then it obviously removes the approval to go through the department for that variance approval.

11:06
Okay, so now we'll still have to see if Maricopa or Pinal or whatever county you're in decides to change their roles and take a look at that.

11:17
Otherwise, if they're still at twice a week, we'd still do the variance just like we're doing.

11:23
But if they at some point change their role to say once a week, if you're doing trash recycling, then we wouldn't have to do a variance because that would be the rule.

11:33
That is correct. That's why we're kind of trying to give the counties more leeway to do that.

11:39
Okay.

11:39
Yes, we really want to make sure that as a minimum state for the state, we weren't imposing, you know, a burden on, say, Mojave County, you know, based on, you know, what Mayor Copa County needs are.

11:51
So that's why we really wanted to make sure that it's kind of tailored, that it could be establish a minimum standard, But allow each county to adjust if needed.

12:02
Okay, so We just still need to check what the counties are doing.

12:07
Keep that the same until Yes, I would quote I would recommend coordinating with Yeah coordinating with the county that you reside in And find out if if they're going to base theirs based off of the state minimum or if they're going to have something different Okay Queen Creek is fun because we get to be in two counties. So thank you.

12:32
No, thank you Thank you, and I would ask you if you no longer have a question to lower your hand Dave Bennett, did you have a follow-up question?

12:48
seeing that hand down Tina Moline, I believe Hi, thank you, Matt.

12:55
I just I am with the city of Kingman and I wanted to just ask if the state has been in touch with any of the counties as part of this whole making process yet.

13:13
If we have a panelist.

13:15
Yep.

13:19
Can you hear me.

13:20
I'm sending you back.

13:22
Well, but Tina, I believe I'm going to meet you. I think we might be getting some feedback.

13:27
Is that better? Okay, I'm not hearing that go.

13:32
Yes, so we did engage with the counties during the middle of the rulemaking process to find out, you know, what they saw as kind of their role in the variance program, whether they felt it was duplicative, and so we kind of tabulated all that.

13:50
Now, as far as, like, a rollout for these changes, no, there hasn't been discussion as to what each county is going to do.

14:03
And so, with the proposed rulemaking moving forward, then, you know, we do hope to have further discussions with the county.

14:11
There currently are, I believe, 40, 44 approved variances.

14:16
So, we do expect that there's going to be some questions from those that are gonna be impacted in developing a path and kind of a message plan for going forward.

14:30
Thank you very much.

14:31
You're welcome.

14:35
Were there any other questions at this time?

14:40
Okay, seeing none.

14:47
Seeing no more questions, we will now begin the formal oral comment period.

14:51
Reminder, restate questions you may have had if you want them as part of the public comment record.

14:55
I'm going to call speakers one by one.

14:58
If your hand is raised, I will call on you in the hearing webinar as your turn arrives.

15:01
I apologize in advance for any mispronounced names.

15:04
A reminder that you will need to unmute yourself before you can speak.

15:08
When called, please first state your name for the record and then begin your public comment.

15:11
Everyone will have five minutes to speak.

15:14
I will remind you when you have one minute remaining.

15:16
I would also ask that you speak clearly into your microphone so that we can ensure every word is captured.

15:21
Thank you.

15:22
Now, is there anyone who would like to make a formal comment?

15:42
I'm not seeing any raised hands yet, but we'll give it some more time in case people are getting their thoughts together.

16:19
I'm still not seeing any raised hands, but we'll give it just a few more minutes to ensure anyone has the opportunity to make the public comment they want.

17:08
Still not seeing any hands raised, but we'll give it another minute or so.

17:20
Yes, Michael Racy.

17:28
I apologize if I missed you.

17:30

I think your hand is now down.

17:46
Michael Rossi for Pima County.

17:47
I was trying to unmute, it wasn't unmuting.

17:51
We can hear you now.

17:53
We support the rule change.

17:54
We think it streamlines the process, will aid in efficiency.

17:59
Most jurisdictions and most variances are to go to once a week pickup with once a week recycling.

18:07
So my guess is the agency would know better is it will reduce the number of variances and we think it's a good change.

18:14
Thank you.

18:18
Thank you.

18:18
Are there any other comments?

18:45
Okay.

18:47
Well, seeing no more comments, we will now end the formal oral comment period.

18:55
Thank you.

18:56
As a reminder, written or email comments related to this proposed rulemaking may still be submitted to ADEQ by 5 p.m. on Friday, tomorrow, June 21st.

19:05
Comments may be submitted as shown on the screen via email to ripandtrop.mat at azdeq.gov or wasterulemaking at azdeq.gov or via U.S.

19:16
mail postmarked by June 21st to Matt Rippentrop, ADEQ 1110, West Washington Street,

Phoenix, Arizona 85007. The time is now 1 19 p.m.

19:29
and I close this public hearing on ADEQ's notice of proposed rulemaking for frequency of collections.

19:35
Thank you all for participating. The recording is now being ended.

RE-GENERATE TRANSCRIPTSAVE EDITS

Public Comment to Arizona R-18-13-308

11-19-24

Submitted to:

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Submitted by:

Steven M. Viny, CEO

Envision Holdings

23250 Chagrin Blvd,

Beachwood, Ohio 44022

Dear Arizona GRRC Members:

With this letter, I hereby request that the GRRC refrain from further consideration of the proposed revision to R-18-13-308 in its present form as presented in the GRRC November 5th Agenda, listed as Item C-3. From a historical perspective, what started out as a purposeful and well-intended rule change has been rewritten in such a way that the current version contravenes the DHS Sustainability and Environmental Programs and poses a threat to the environment and the well-being of Arizonans. We ask that this board remove this item in its present form from the GRRC agenda. Further, we ask that the GRRC recommend to ADEQ that the agency re-submit a revised modification to R18-13-308 for consideration to this Board, designed to meet the DHS Sustainability and Environmental Programs and accomplish its originally intended purpose as signed by former Governor Doug Ducey which was "***designed to increase market-based recycling and a circular economy***".

1. The Revision to R18-13-308 Contravenes the DHS Sustainability and Environmental Programs

The DHS has set exemplary standards designed to reduce waste, increase recycling, and reduce the effects of climate change. As but a few examples listed in the DHS Sustainability and Environmental Programs are as follows:

Section 1 states *"DHS's responsibilities toward sustainability are twofold: (1) enhance resilience and adaptation to climate-related disruptions; and (2) increase environmental stewardship to mitigate and reduce the impact of climate change. DHS is an environmental leader in the Federal Government and established ambitious goals to decrease greenhouse gas (GHG) emissions…"*

Section 2. D states as follows:

"D. Reducing Waste and Pollution DHS's goal is to ***achieve a waste diversion rate of at least 50 percent*** *and maintain cost effective waste prevention and recycling programs. The Department is updating its policy to match new goals and objectives. Accounting for Recycling Funds, which formalizes the tracking and reporting of recycling funds received and the accounting of those expenditures, is done in a manner consistent with DHS policy and applicable federal statutes.* ***In addition to these actions,*** *DHS continues to actively reduce waste and pollution through several measures. • Incorporation and application of construction and demolition (C&D) waste diversion clauses. • Waste and recycling outreach efforts increase awareness through events throughout the year. • Compliance with Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 (42 U.S.C 11001-11023)."*

Ironically, the original purpose of the revision to R18-13-308 signed by former Governor Doug Ducey was consistent with DHS Sustainability and Environmental Programs as it was ***"designed to increase market-based recycling and a circular economy."*** ADEQ staff developed 2 scenarios as part of the rulemaking process, which can be seen in the ADEQ slide below:

HOME | ABOUT | PERMIT AND COMPLIANCE ASSISTANCE | PROGRAMS | ONLINE SERVICES | MY COMMUNITY | RECORDS CENTER | EMAPS

< RETURN TO ACTIVE RULEMAKINGS

Solid Waste Frequency of Collection Rulemaking

Revised on: May 12, 2023 - 1:21pm

Summary:

ADEQ has received approval from the Governor to amend R18-13-308, Frequency of Collection, in a rulemaking that is deregulatory and designed to increase market-based recycling and a circular economy.

This rulemaking will contemplate at least two scenarios for frequency of collection waivers:

1. Replace the minimum frequency of collection from twice per week to once per week.
2. Require a frequency of twice per week unless the waste management organization obtains an approved variance or is able to demonstrate a diversion variance by managing to divert a minimum of 60 percent or greater of trash for beneficial use, i.e., recycling/circular economy.

Documents:

- Notice of Docket Opening (published Nov. 10, 2022) | View >

Additional Information:

BACK TO TOP

https://www.azdeq.gov/sw-collection-rulemaking 1/2

Scenario 1 simply reduces the state mandated collection frequency from twice per week to once per week absent any requirement for recycling/waste diversion, let alone the DHS goal of 50%. Scenario 1 therefore appears inconsistent with the DHS Sustainability and Environmental Programs as it offers no pathway "*to achieve a waste diversion rate of at least 50 percent and maintain cost effective waste prevention and recycling programs."* And in fact, Scenario 1 works in the converse by streamlining a direct pathway for any given local government to simply abandon its recycling program altogether, and landfill all its waste.

Scenario 2 is consistent with the DHS Sustainability and Environmental Programs as it establishes a minimum of 60% recycling/waste diversion demonstration to trigger the "diversion variance" allowing a given local government the ability to reduce collection frequency from twice per week to once per week. By far, "collection" is the most expensive component of solid waste management. Scenario 2 was designed to create an economic incentive (i.e the potential cost savings to reduce collection costs in half) to entice local governments in Arizona to increase their waste diversion rate. As an example, if a given local government chose to send their waste to a mixed waste processing facility instead of a landfill, and a 60% recycling rate was achieved, the local government would be able to offset the additional cost of waste processing vs landfilling by the cost savings afforded by the reduction in collection frequency. Such a program would allow local governments to meet or exceed the DHS goals without any additional cost to local government and the public it represents. Scenario 2 utilizes creative rulemaking as a means to improve Arizona's anemic recycling rate without adding cost. A recent national study by Lawnstarter ranks Arizona near dead last at 47th out of 50 states in recycling, and 50th out of 50 in managing food waste and solid waste policy.

- Recycling and Waste Minimization
  - Arizona Ranks #47th out of 50 states (#1 is best)
  - Arizona Ranks #50 in Policy (worst in USA)
  - Arizona ranks as the #1 worst state in food waste management

Overall Rank (1=Best)	State	Overall Score	Policies Rank
36	Louisiana	38.36	40
37	Hawaii	38.99	18
38	New Mexico	38.69	31
39	Florida	38.27	43
40	North Dakota	38.20	34
41	Kansas	37.77	46
42	West Virginia	37.12	31
43	Oklahoma	36.41	37
44	Wyoming	35.48	31
45	Kentucky	35.06	46
46	Tennessee	32.73	49
47	Arizona	28.29	50
48	Montana	27.78	49
49	Nevada	24.59	44
50	Alaska	24.56	46

BEST AT MANAGING FOOD WASTE

1. Massachusetts
2. Connecticut
3. Oregon
4. Vermont
5. Louisiana

WORST AT MANAGING FOOD WASTE

1. Arizona
2. North Dakota
3. Hawaii
4. Nevada
5. Oklahoma

Source: https://www.lawnstarter.com/blog/studies/best-worst-states-waste-management/

While Scenario 2 is consistent with the DHS Sustainability and Environmental Programs, it is the language for ADEQ Scenario 1 for which ADEQ currently seeks GRRC approval. Therefore, we ask that GRRC not approve the November 5 agenda item C-3 as presented, and further, that GRRC recommend to ADEQ that they resubmit revised language for approval amending R18-13-308 based on ADEQ's Scenario 2.

2. GRRC Agenda Item C-3 Poses a Threat to the Environment and the Well-Being of Arizonans

Reliance on the practice of landfilling waste in Arizona poses a threat to the environment. Groundwater contamination, air pollution, and heat gain from global warming produced by methane and CO2 released from landfills are just a few of the examples of environmental problems created by landfills.

a. *Groundwater contamination.*

Nearly half of the potable water supply in Arizona comes from Groundwater. Landfills are a source of groundwater pollution. Landfills are essentially a tomb designed to receive and contain solid waste on a long-term basis. However, landfills can leak. Liquids within the landfill (called Leachate) pick up contaminants from the waste as the leachate percolates to the bottom of the landfill. New "best available technology, or BAT" landfills are required to have leachate collection systems, however older landfills in many cases did not have leachate collection. Even in BAT landfills, liner can leak, which can allow harmful toxins to be released into the groundwater supply. At least 3 landfills that are known to have contaminated Arizona aquifers are listed on WQARF (Water Quality Assurance Revolving Fund) :

a. *City of Tucson – Los Reales*
b. *Estes Landfill*
c. *Silverbell landfill*

Landfills do not go away. They remain as a permanent tomb for waste forever. It therefore remains quite possible that other landfills in the State of Arizona, both operating sites and closed sites, may release pollution into the groundwater in the future. Recycling and waste diversion programs play a vital environmental role as they reduce Arizona's reliance on landfills and serve as a viable option to reduce the impact of groundwater pollution both now and into the future.

b. Air pollution

Landfills create methane and CO2, both of which are harmful greenhouse gases (GHG's). Organic materials such as food waste, green waste, woody biomass, paper, cardboard, and other organic materials naturally decompose in the landfill, releasing harmful GHG's into the atmosphere. GHG's emanating from landfills are a significant contributor to global warming. A July 2021 article entitled "**Your Trash Is Emitting Methane In The Landfill. Here's Why It Matters For The Climate",** as published by NPR claims that *"Landfills are among the nation's largest sources of methane, a greenhouse gas far more potent than carbon dioxide and a major contributor to global warming. A seminal U.N. report published in May found that immediate reductions in methane emissions are the best, swiftest chance the planet has at slowing climate change.*

An article published on Tucson.com on April 24, 2019 shows that Tucson and Phoenix are the #3 and #4 highest heat gain cities in America. Heat gain mitigation strategies such as the identification of heat gain sources and the remediation of point sources of methane and CO2 are of great importance to Arizona.

Enter Carbon Mapper. Carbon Mapper (https://carbonmapper.org/) "is a 501c3 nonprofit focused on filling data gaps and improving global monitoring of methane and CO_2 to enable science-based decision-making. Carbon Mapper's history builds on over a decade of research and collaboration, including a series of NASA-funded projects that laid the technical and scientific foundation for the importance of frequent monitoring and mitigation of methane and CO_2 point sources. Since 2016, our experts and collaborators at NASA's Jet Propulsion Lab and Arizona State University have used aircraft equipped with prototype versions of the Carbon Mapper Coalition satellite instruments, along with other observing systems and data sets, to assess methane emissions in representative regions and sectors across the U.S. We use remote sensing technology to detect, pinpoint, and quantify methane and CO_2 at the scale of individual facilities."

Carbon Mapper states “using an imaging spectrometer onboard a satellite or aircraft, we detect and pinpoint methane emissions at the infrastructure or facility level. Emissions are quantified using a rigorous, science-based process that is both vetted by peers and published. Our data empowers decision-makers with the granularity needed to pinpoint where emissions are coming from and the speed to enable rapid action.”

Carbon Mapper used its remote sensing technology to measure several (but not all) Arizona landfills. Based on the data published on their website, the Arizona landfills measured emit a total of about 2158 kg/hr of methane. Using the US EPA Greenhouse Gas Equivalencies Calculator, (https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator) 2158 kg/hr of methane is the equivalent to about 528,333 metric tonnes of CO2 per year. Per US EPA calculator – this is the equivalent to combusting 582 million pounds of coal each year. Again, per the US EPA calculator, the amount of methane generated by the Arizona landfills measured by Carbon Mapper would require planting 616,844 acres of forest per year in order to offset this GHG generation.

Of note, the overall release of landfill methane emanating from landfills in Arizona, is far greater than previously mentioned, since Carbon Mapper measured only some but not all landfills in Arizona.

It is a proven fact that landfill methane can be mitigated by diverting the organic fraction of waste to recycling infrastructure such as composting facilities, gasification facilities (in Arizona – called “Advanced Recycling Facilities), or other such facilities instead of burying waste in landfills. These types of facilities are the backbone of any robust recycling effort designed to meet the 60% recycling/diversion standard. ADEQ scenario 1 is therefore not supportive of a solution to address GHG emissions nor the DHS Sustainability and Environmental Programs as it contains no provision to stimulate recycling. While the ADEQ Scenario 2 language does include a 60% recycling achievement threshold, ADEQ’s Secenario 1 language remains silent on recycling. For this reason, we implore the GRRC to request ADEQ to submit revised lanagague to R18-13-301 in accordance with ADEQ’s Scenario 2, which includes a requirement to achieve 60% recycling/landfill diversion as a provision to be granted a change in solid waste collection frequency from twice per week to once per week.

3. *Creation of a Circular Economy/Economic Development*

Landfills do not create economic development. Conversely, increasing market-based recycling and creating a circular economy can and will create thousands of new permanent jobs statewide and drive billions of dollars of new capital investment. The advanced technology available today to sort waste requires significant private investment designed to capture elevated volumes of material from the waste stream and divert those captured materials into commerce to create a circular economy. R18-13-308 currently provides a discretionary waiver process to reduce to once per week collection vs the required twice per week requirement, however the waiver can be cancelled at any time. Change is needed to R18-13-308 to establish a permanent collection frequency variance so that lenders and/or private institutions can justify the significant capital investment required to fund the infrastructure necessary to realize 60% recycling/diversion rate or higher.

The original purpose of the revision to R18-13-308 was to “increase market-based recycling and create a circular economy” in Arizona. While ADEQ Scenario 2 accomplishes this mission, ADEQ Scenario 1, which is represented by the language presented in the GRRC agenda item C-3, does not. In fact, rather than fostering economic development and a circular economy, the language as currently proposed to GRRC streamlines a process that can lead to the increased use/dependency on area landfills, thus becoming an impediment to establishing market-based recycling and a circular economy.

Conclusion

While recycling/diversion programs can and will reduce negative environmental impacts of landfills, our fear is that ADEQ’s proposed language, as currently presented for approval by this Board, creates a direct pathway which can undermine recycling programs in Arizona. The proposed revision submitted by ADEQ to the GRRC for approval streamlines the possibility for Arizona local governments to abandon recycling efforts altogether and simply landfill all their waste. While this may be an unintended consequence, the amendment as currently proposed to R18-13-308 essentially codifies a clear pathway by which local governments can choose to switch to once per week rubbish-only collection as a method to eliminate the cost of recycling.

I implore GRRC to avoid consideration of agenda item C-3 (proposed revision to R18-13-308). Further, I ask the Board to recommend that ADEQ develop and resubmit revised language based on ADEQ Scenario 2 and ensure that its’ purpose fosters the DHS’s goals, and is designed to increase recycling, sustainability, and reduce the effects of climate change in the State of Arizona.

I firmly believe that given properly crafted language, a revision to R18-13-308 can have a profound net positive effect on Arizona residents, businesses, and the environment, while simultaneously meeting or exceeding the DHS Sustainability and Environmental Programs.

Comments Hereby submitted by:

Steven M. Viny, CEO

Gmail

Tiffany Andersen Volcko <andersen.tiffany@azdeq.gov>

Fwd: Request for Exemption from the Rulemaking Moratorium – 18 A.A.C. Chapter 13, Article 3: Solid Waste Collection Frequency

Edwin Slade <slade.edwin@azdeq.gov> Thu, Aug 25, 2022 at 3:31 PM
To: Tiffany Andersen Volcko <andersen.tiffany@azdeq.gov>
Cc: Dena Kalamchi <kalamchi.dena@azdeq.gov>, Ana Vargas <vargas.ana@azdeq.gov>, Mark Lewandowski <lewandowski.mark@azdeq.gov>

Approved.

---------- Forwarded message ---------
From: **Misael Cabrera** <cabrera.misael@azdeq.gov>
Date: Wed, Aug 24, 2022 at 1:54 PM
Subject: Fwd: Request for Exemption from the Rulemaking Moratorium – 18 A.A.C. Chapter 13, Article 3: Solid Waste Collection Frequency
To: Edwin Slade <slade.edwin@azdeq.gov>

---------- Forwarded message ---------
From: **Buchanan Davis** <bdavis@az.gov>
Date: Wed, Aug 24, 2022 at 1:16 PM
Subject: Re: Request for Exemption from the Rulemaking Moratorium – 18 A.A.C. Chapter 13, Article 3: Solid Waste Collection Frequency
To: Misael Cabrera <cabrera.misael@azdeq.gov>
Cc: Amanda Stone <stone.amanda@azdeq.gov>, Samuel LeDoux <sledoux@az.gov>

Director Cabrera, thanks for the information regarding this request. This rulemaking will relieve some regulatory burden by contemplating multiple options for trash pickup. You may move forward.

Thanks again,

Buchanan Davis | **Office of Arizona Governor Doug Ducey**
Policy Advisor, Natural Resources
C. (928) 369-6926
O. (602) 542-1782
www.azgovernor.gov

On Mon, Jul 25, 2022 at 4:48 PM Misael Cabrera <cabrera.misael@azdeq.gov> wrote:

> Hi Buck,
>
> Please see attached a Solid Waste Collection Frequency moratorium exemption request. Please do not hesitate to let us know if you have questions.
>
> Thanks,
>
> **Misael Cabrera, PE**
> Director
> Arizona Department of Environmental Quality
> Ph: 602-771-2203

--

Edwin Slade

Administrative Counsel

O: 602-771-2242
M: 602-540-0972

azdeq.gov

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Gmail

Tiffany Andersen Volcko <andersen.tiffany@azdeq.gov>

Fwd: ADEQ Rulemaking Exemption

1 message

Edwin Slade <slade.edwin@azdeq.gov> Wed, Feb 7, 2024 at 5:06 PM
To: Tiffany Andersen Volcko <andersen.tiffany@azdeq.gov>, Matt Rippentrop <rippentrop.matt@azdeq.gov>, Ana Vargas <vargas.ana@azdeq.gov>, Mark Lewandowski <lewandowski.mark@azdeq.gov>, Zachary Dorn <dorn.zachary@azdeq.gov>

Rulemaking Exemption Memos approved...

---------- Forwarded message ---------
From: **Blaise Caudill** <bcaudill@az.gov>
Date: Wed, Feb 7, 2024 at 4:30 PM
Subject: ADEQ Rulemaking Exemption
To: Edwin Slade <slade.edwin@azdeq.gov>
Cc: Karen Peters <peters.karen@azdeq.gov>, Maren Mahoney <mmahoney@az.gov>, Julie Riemenschneider <riemenschneider.julie@azdeq.gov>

Good afternoon Eddie,

ADEQ has approval to proceed with the rulemaking process for the following:

- A.A.C. Title 18, Chapter 13 – Solid Waste Transfer Facilities
- A.A.C. Title 18, Chapter 2, Article 6, Emissions From Existing and New Nonpoint Sources & Article 13, State Implementation Plan Rules for Specific Locations
- A.A.C. Title 18, Chapter 13 - Arizona Coal Combustion Residuals Program
- 18 A.A.C. Chapter 13, Article 3: Solid Waste Collection Frequency

Thank you,
Blaise

--

OFFICE OF THE GOVERNOR KATIE HOBBS

Blaise Caudill (He/His/Him) (what's this?)
Energy Policy Advisor
Office of Governor Katie Hobbs
bcaudill@az.gov

Office of Governor Katie Hobbs
1700 W Washington St.
Phoenix, AZ 85007

Cell 520.312.5854
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--

Edwin Slade
Administrative Counsel
O: 602-771-2242
M: 602-540-0972

azdeq.gov

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Gmail

Matt Rippentrop <rippentrop.matt@azdeq.gov>

Fwd: A.A.C. R18-13-308 Frequency of Waste Collection Notice of Final Rulemaking (NFRM)

Edwin Slade <slade.edwin@azdeq.gov> Wed, Aug 21, 2024 at 12:40 PM
To: Matt Rippentrop <rippentrop.matt@azdeq.gov>, Tiffany Andersen <andersen.tiffany@azdeq.gov>
Cc: Amanda Stone <stone.amanda@azdeq.gov>, Julie Riemenschneider <riemenschneider.julie@azdeq.gov>, Karen Peters <peters.karen@azdeq.gov>

FYI

---------- Forwarded message ---------
From: **Maren Mahoney** <mmahoney@az.gov>
Date: Tue, Aug 20, 2024 at 6:07 PM
Subject: A.A.C. R18-13-308 Frequency of Waste Collection Notice of Final Rulemaking (NFRM)
To: Edwin Slade <slade.edwin@azdeq.gov>
Cc: Blaise Caudill <bcaudill@az.gov>

Eddie,

ADEQ is approved to proceed on A.A.C. R18-13-308 Frequency of Waste Collection Notice of Final Rulemaking (NFRM).

Sincerely,
--

OFFICE OF THE GOVERNOR
KATIE HOBBS
LOVE FREEDOM RESPECT EQUALITY TOLERANCE PRIDE

Maren Mahoney (She/Her/Hers) (what's this?)
Director, Office of Resiliency
Office of Governor Katie Hobbs
mmahoney@az.gov
Cell: 602.501.4954

1700 W. Washington St. 5th Fl.
Phoenix, AZ 85007
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--

Edwin Slade
Administrative Counsel
O: 602-771-2242
M: 602-540-0972

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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D-7.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 13

New Article: Article 10, Article 17

New Section: R18-13-1001, R18-13-1002, R18-13-1003, R18-13-1003.01, Table 1, R18-13-1003.02, R18-13-1004, R18-13-1005, R18-13-1006, R18-13-1007, R18-13-1008, R18-13-1010, R18-13-1010.01, R18-13-1011, R18-13-1012, R18-13-1013, R18-13-1014, R18-13-1015, R18-13-1016, R18-13-1017, R18-13-1018, R18-13-1019, R18-13-1020, R18-13-1021, Table 2, Table 3, R18-13-1701, R18-13-1703, R18-13-1704

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: November 12, 2024

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 13

New Article: Article 10, Article 17

New Section: R18-13-1001, R18-13-1002, R18-13-1003, R18-13-1003.01, Table 1, R18-13-1003.02, R18-13-1004, R18-13-1005, R18-13-1006, R18-13-1007, R18-13-1008, R18-13-1010, R18-13-1010.01, R18-13-1011, R18-13-1012, R18-13-1013, R18-13-1014, R18-13-1015, R18-13-1016, R18-13-1017, R18-13-1018, R18-13-1019, R18-13-1020, R18-13-1021, Table 2, Table 3, R18-13-1701, R18-13-1703, R18-13-1704

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) seeks to add two new Articles containing twenty-nine (29) new sections in Title 18, Chapter 13, Articles 10 and 17 related to Coal Combustion Residuals and corresponding Financial Assurance, respectively. Specifically, the Department indicates these rules establish an Arizona coal combustion residuals (CCR) permit program to be approved by the United States Environmental Protection Agency (EPA) to operate in lieu of the federal CCR program. In addition, after EPA approval and permit issuance, the Arizona CCR permit program would operate in place of Arizona Department of Water Resources (ADWR) dam safety rules for CCR surface impoundments.

The Department indicates in 2022, the Arizona legislature enacted Chapter 178 authorizing the Department to develop a state permit program for CCR. Pursuant to that legislation, A.R.S. § 49-891 requires the Arizona program to be neither more or less stringent than federal nonprocedural requirements in 40 CFR 257, subpart D, with two exceptions related to standards already developed in Arizona. First, as provided in A.R.S. § 49-891(B), the Department's CCR rules are required to be more stringent than 40 CFR 257, subpart D where existing ADWR dam safety standards are more stringent. A CCR surface impoundment typically includes a dike or embankment that holds the CCR and liquids in the impoundment. In Arizona, a surface impoundment with an aboveground embankment under EPA regulations is a dam under ADWR rules. These stricter dam safety standards based on ADWR rules are contained in proposed R18-13-1002, R18-13-1003.01, R18-13-1003.02 and R18-13-1010.01.

Second, the Department may opt to be more stringent than EPA to match aquifer protection standards already developed in Arizona. In this category, this final rule is broader than EPA's CCR regulations, with requirements for non-CCR wastestreams that may be placed in a CCR unit at R18-13-1005(B). These requirements are explained in more detail in the section-by-section explanations later in the Department's Notice of Final Rulemaking Preamble.

1. <u>Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?</u>

The Department cites both general and specific statutory authority for these rules.

2. <u>Do the rules establish a new fee or contain a fee increase?</u>

Pursuant to A.R.S. § 41-1008(A)(1), "an agency shall not…[c]harge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute or tribal state gaming compact.

The Department indicates this rulemaking does establish new fees. Specifically, rule R18-13-1021 sets forth the fees and billing procedures for CCR facilities and permitting actions. In Subsection A, Table 2 specifies annual registration fees. In subsection (B), Table 3 presents initial and maximum fees for a CCR facility permit and CCR permit modification. Subsections (C), (D), and (E) state the billing procedure that the Department must follow during permitting actions. Subsection (E) also includes the hourly billing rate of $244 per hour for permitting activities and the procedure for annual adjustment of annual fees and the billing rate pursuant to United States Bureau of Labor Statistics Consumer Price Index tables.

The Department indicates these fees are specifically authorized by A.R.S. § 49-891(D). A.R.S. § 49-891(D) states, "[t]he rules for CCR permits shall include: 1. Permit processing fees from the applicant to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit, beginning when an application is submitted. 2. Annual fees for the program approved by the United States environmental protection agency beginning after CCR program approval."

As such, Council staff believes the the Department is in compliance with A.R.S. § 41-1008.

3. <u>Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?</u>

The Department indicates it did not review any study relevant to this rulemaking.

4. <u>Summary of the agency's economic impact analysis:</u>

These rules enact already existing standards from the EPA and ADWR into the Department's rules. The rules also enact additional requirements that would apply for the first time at some point after these rules are effective. The Department believes that where these CCR rules match existing standards, they do not have any direct negative impact on the four facilities in Arizona that will require a CCR facility permit.

The Department estimated the additional annual cost to implement the CCR permit program at $158,760, separate from the cost of processing permits. The overall cost to the Department is expected to be balanced by the fees it collects. In spite of the fees necessary to cover the cost of the program, Arizona's CCR facilities have supported the Department's development of a state permit program as early as 2018. The Department believes the overall benefits for all parties involved exceed the overall costs.

5. <u>Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?</u>

The Department believes its estimate of the annual cost of the program not covered by permit processing fees is the lowest possible and therefore imposes the least burden and cost. Further, the annual registration fees in R18-13-1021(A) are based on the number and complexity of CCR units at each facility. This formula was arrived at after discussion with the affected stakeholders, and it is roughly proportional to the amount of time the Department will likely spend relative to each facility. In the Department's judgment, it is the best way to fairly assess the annual registration fees.

6. <u>What are the economic impacts on stakeholders?</u>

The Department believes that because the Department will be replacing other agencies as the enforcing agency for standards that will remain the same, the rule will have a positive impact on the CCR facilities as well as the local community by enabling communication with a single, local agency.

CCR facilities will be subject to the Department's permitting requirements that may exceed, or at least be additional to, what will be required under future EPA permitting requirements for non-participating states. CCR facilities will also be required to provide financial

assurance and pay annual registration fees and permit processing fees. The annual fees are designed to cover the Department's non-permit related costs in administering the state CCR program.

7. <u>Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?</u>

The Department indicates between the Notice of Proposed Rulemaking published in the Administrative Register on July 12, 2024 and the Notice of Final Rulemaking now before the Council for consideration, the Department made the following changes to the rules:

- In R18-13-1002(E), R18-13-1003(G) and R18-13-1010(G), ADEQ changed "{proposed rule date}" or "{insert proposed rule date}" to "July 12, 2024".
- In R18-13-1010(B)(2), ADEQ clarified that ADWR's approval to construct is independently required when seeking ADEQ approval for certain actions before a facility permit has been issued. ADEQ clarified this in R18-13-1010(B)(2)(a) as follows:
    - "<u>a. For a CCR surface impoundment before a CCR facility permit has been issued for that facility, the owner or operator has obtained approval to construct from ADWR and demonstrates to the satisfaction of the Director that commencing construction before approval is necessary to comply with 40 CFR 257, as incorporated in this Article;</u>"
- Modified R18-13-1010(C) to add an alternate time for the public meeting:
    - Proposed:
        - <u>C. Prior to submitting an initial or renewal CCR facility permit application, the owner or operator shall hold a public meeting in order to solicit questions from the community and inform the community about the permit to be applied for. The owner or operator shall notify ADEQ at least 30 days before the meeting, provide adequate public notice for the meeting, and submit a summary of the meeting to ADEQ.</u>
    - Final:
        - <u>C. The owner or operator shall hold a public meeting in order to solicit questions from the community and inform the community about its intended permit at one of the times listed below. The owner or operator shall notify ADEQ at least 30 days before the meeting, provide adequate public notice for the meeting, and submit a summary of the meeting to ADEQ:</u>
            <u>1. Within 90 days after receiving notice from the Director that its application is administratively complete, or</u>
            <u>2. Prior to submitting an initial or renewal CCR facility permit application.</u>
- In R18-13-1017(F)(7), ADEQ added the last clause as follows:
    - 7. Replace monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness<u>, but not including routine maintenance or replacement of well components and related equipment;</u>

Council staff does not believe these changes make the current rules in the Notice of Final Expedited Rulemaking substantially different from the proposed rules in the Notice of Proposed Expedited Rulemaking pursuant to A.R.S. § 41-1025.

8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

The Department indicates it received six written comments, four from the Arizona utilities that would be seeking CCR facility permits, one from an environmental organization, and one from a school district near a CCR facility. The Department indicates the four utilities expressed strong support for the Department seeking authorization for the federal program with this rule. The Department indicates the environmental organization and school district expressed concern and generally opposed ADEQ seeking authorization. The comments received by the Department and the Department's responses are summarized in Section 12 of the Preamble to the Notice of Final Rulemaking. Additionally, copies of the public comments received have been included in the final materials for the Council's reference. Council staff believes the Department has adequately responded to public comments related to this rulemaking.

9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates the rules require a CCR permit. However, the Department indicates, pursuant to A.R.S. § 41-1037(A)(3), "[t]he issuance of a general permit is not technically feasible…" as there are only four facilities in Arizona to be permitted and each facility is unique and will be subject to different permit conditions. As such, Council staff believes the Department is in compliance with A.R.S. § 41-1037.

10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

Pursuant to A.R.S. § 41-1052(D)(9), "[t]he council shall not approve the rule unless…[t]he rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law."

The Department indicates two federal laws are applicable to the subject of this rule: the WIIN Act (Water Infrastructure Improvements for the Nation Act) enacted by Congress in December 2016, and 40 CFR 257, subpart D, first promulgated in 2015, but amended since. The WIIN Act provided authority for EPA to review and approve permit programs submitted by states for CCR facilities. The approved state programs would then operate in lieu of the federal requirements in 40 CFR 257, subpart D.

The Department indicates in five areas, the rules are statutorily authorized to be more stringent than federal law:

- Aquifer protection standards already developed under ADEQ statutes and rules for non-CCR wastestreams. *See* R18-13-1005(B). Authorized in A.R.S. § 49-891(A);
- CCR surface impoundment safety standards already existing under Arizona Department of Water Resources rules at 15 A.A.C. 12, Article 15. Authorized in A.R.S. § 49-891(B);
- New ADEQ permitting requirements. These new permitting requirements are contained in R18-13-1010 through R18-13-1021. Authorized in A.R.S. §§ 49-891(C) and (F);
- Financial assurance requirements contained in R18-13-1020 and Article 17. Authorized in A.R.S. § 49-770(A); and
- Annual registration fees and permit processing fees contained in R18-13-1021. Authorized in A.R.S. § 49-891(D).

11. <u>Conclusion</u>

This regular rulemaking from the Department seeks to add two new Articles containing twenty-nine (29) new sections in Title 18, Chapter 13, Articles 10 and 17 related to Coal Combustion Residuals and corresponding Financial Assurance, respectively. Specifically, the Department indicates these rules establish an Arizona CCR permit program to be approved by the United States EPA to operate in lieu of the federal CCR program. In addition, after EPA approval and permit issuance, the Arizona CCR permit program would operate in place of ADWR dam safety rules for CCR surface impoundments.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF HEALTH SERVICES

October 15, 2024

<u>VIA EMAIL</u>: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 25, Expedited Rulemaking

Dear Ms. Klein:

1. <u>The close of record date</u>: September 16, 2024

2. <u>Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):</u>
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The rulemaking amends requirements to reduce steps and removes requirements that are outdated or need clarification, meeting the requirements in A.R.S. § 41-1027(A)(5) and (6).

3. <u>Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:</u>
The rulemaking for 9 A.A.C. 25 does not relate to a five-year-review report.

4. <u>A list of all items enclosed:</u>
   a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
   b. Statutory authority
   c. Current rule

The Department is requesting that the rules be heard at the Council meeting on December 3, 2024.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. SOLID WASTE MANAGEMENT

PREAMBLE

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

September 10, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
Article 10.	New Article
R18-13-1001.	New Section
R18-13-1002.	New Section
R18-13-1003.	New Section
R18-13-1003.01.	New Section
Table 1	New Table
R18-13-1003.02.	New Section
R18-13-1004.	New Section
R18-13-1005.	New Section
R18-13-1006.	New Section
R18-13-1007.	New Section
R18-13-1008.	New Section
R18-13-1010.	New Section
R18-13-1010.01.	New Section
R18-13-1011.	New Section
R18-13-1012.	New Section
R18-13-1013.	New Section
R18-13-1014.	New Section
R18-13-1015.	New Section
R18-13-1016.	New Section
R18-13-1017.	New Section
R18-13-1018.	New Section

R18-13-1019.	New Section
R18-13-1020.	New Section
R18-13-1021.	New Section
Table 2	New Table
Table 3	New Table
Article 17.	New Article
R18-13-1701.	New Section
R18-13-1703.	New Section
R18-13-1704.	New Section

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

Authorizing statute: A.R.S. § 49-891

Implementing statutes: A.R.S. §§ 49-763.01, 49-769, 49-770, 49-781, 49-783, 49-791, 49-881, 49-891, 49-891.01

4. The effective date of the rule:

This rule shall become effective 60 days 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 (to be filled in by Register editor).

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: 30 A.A.R. 2026, June 7, 2024, Issue Number:23, File Number, R24-100

Notice of Proposed Rulemaking: 30 A.A.R. 2275, July 12, 2024, Issue Number: 28. File Number: R24-126

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

Name: Mark Lewandowski

Address: Arizona Department of Environmental Quality, Waste Programs Division 1110 W. Washington Street Phoenix, AZ 85007

Telephone: (602) 771-2230

Email: lewandowski.mark@azdeq.gov

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

Summary. The Arizona Department of Environmental Quality (ADEQ) has finalized rules to establish an Arizona coal combustion residuals (CCR) permit program to be approved by the United States Environmental Protection Agency (EPA) to operate in lieu of the federal CCR program. In addition, after EPA approval and permit issuance, the Arizona CCR permit program would operate in place of Arizona Department of Water Resources (ADWR) dam safety rules for CCR surface impoundments.

The contents of this part of the preamble are:

I. Background.

II. The Arizona CCR permit program.

II.a. Effective date of this rulemaking and early permit applications.

II.b. Language from EPA's proposed permit rule.

II.c. Signatory requirements for owners and operators.

II.d. Pre-application public meeting.

III. Financial assurance.

IV. Transition from Governor's Regulatory Review Council (GRRC) approval to CCR program approval.

V. Transition from CCR program approval until permit issuance.

VI. EPA's CCR "Legacy Rule"

VII. Section-by-Section explanations.

I. Background. In 2015, EPA adopted self-implementing rules for CCR in 40 CFR 257, subpart D, under Subtitle D of the Resource Conservation and Recovery Act (RCRA), that require electric utilities and independent power producers generating coal combustion residuals to follow detailed requirements for the management and disposal of CCR as solid waste. EPA's rules established national minimum criteria for existing and new CCR landfills

and existing and new CCR surface impoundments (“CCR units”) and all lateral expansions of CCR units. The criteria consist of location restrictions, design and operating criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and recordkeeping, notification and internet posting requirements. Subpart D also required that CCR units failing to meet certain criteria in the rule stop receiving waste and retrofit or close, in some circumstances.

Congress enacted the Water Infrastructure Improvement for the Nation (WIIN) Act in 2016, amending section 4005 of RCRA. It provided authority for EPA to review and approve programs submitted by states to permit CCR units, which would then operate in lieu of the federal requirements. The WIIN Act also required EPA to implement a federal permit program in Indian country and nonparticipating states that would require each CCR unit to achieve compliance with applicable criteria established in subpart D. Once the state program is approved, permits or other prior approvals issued pursuant to the approved state permit program operate in lieu of the federal requirements. To be approved, a state program must require each CCR unit to achieve compliance with subpart D or alternative state criteria that EPA determines are “at least as protective as” subpart D. A state permitting program may be approved in whole or in part.

In 2022, the Arizona legislature enacted Chapter 178 authorizing ADEQ to develop a state permit program for CCR. Pursuant to that legislation, A.R.S. § 49-891 requires the Arizona program to be neither more or less stringent than federal nonprocedural requirements in 40 CFR 257, subpart D, with two exceptions related to standards already developed in Arizona. First, as provided in A.R.S. § 49-891(B), ADEQ’s CCR rules are required to be more stringent than 40 CFR 257, subpart D where existing ADWR dam safety standards are more stringent. A CCR surface impoundment typically includes a dike or embankment that holds the CCR and liquids in the impoundment. In Arizona, a surface impoundment with an aboveground embankment under EPA regulations is a dam under ADWR rules. These stricter dam safety standards based on ADWR rules are contained in proposed R18-13-1002, R18-13-1003.01, R18-13-1003.02 and R18-13-1010.01.

Second, ADEQ may opt to be more stringent than EPA to match aquifer protection standards already developed in Arizona. In this category, this final rule is broader than EPA’s

regulations, with requirements for non-CCR wastestreams that may be placed in a CCR unit at R18-13-1005(B). These requirements are explained in more detail in the section-by-section explanations later in this preamble.

This rule incorporates EPA's 40 CFR 257, subpart D, revised by EPA as of December 14, 2020. As a starting point, before ADEQ modifications and exclusions, this was the most convenient incorporation date that takes into account important federal court decisions and EPA CCR rulemakings that occurred after EPA's original 2015 rule. A summary of this background can be found in the November 12, 2020 Federal Register at 85 FR 72506.

ADEQ opened dockets for this rulemaking in the June 10, 2022, June 9, 2023 and June 7, 2024 *Arizona Administrative Register*. ADEQ held a series of working group and stakeholder meetings in 2022, 2023, and 2024. Draft rule language was also shared with EPA during this time and EPA's feedback has been valuable. ADEQ published the proposed rule on June 21, 2024 and held a virtual hearing, with close of comment on August 14, 2024. Some of the major features of this rulemaking are explained below followed by a short section-by-section explanation.

II. The Arizona CCR permit program. EPA's 40 CFR 257, subpart D was designed to be self-implementing, without permits or any other form of formal regulatory approval. The permit program established in this rule has been designed just for the CCR program and is not used elsewhere by ADEQ. It supplements the certifications from "qualified professional engineers" that are used extensively in the federal rule with review and approval of those certifications by ADEQ as part of its permitting program.

II.a. Effective date of this rulemaking and early permit applications. This rule provides that most of the requirements in this rule become effective upon EPA's approval of Arizona's program. Congress drafted the WIIN Act so that an individual CCR unit at a CCR facility remains subject to 40 CFR 257, subpart D, until EPA both approves the state program and the state issues a permit covering the CCR unit under the approved program. For simplicity, under state statute, a CCR surface impoundment remains subject to ADWR dam safety rules until EPA approves the CCR permit program and a permit is issued covering the impoundment under the Arizona program.

Arizona's CCR authorizing legislation requires CCR facilities to submit facility permit applications within 180 days after EPA CCR program approval, but also allows them to submit a permit application before program approval. This final rule provides that no permits will be issued until after CCR program approval to prevent Arizona utilities from holding a document that can't be enforced, and is not yet required by law. See A.R.S. §§ 49-781 and 49-783.

ADEQ recognizes that the initial facility permit process will be lengthy and that there is an indefinite period of time between ADEQ's submittal of its program to EPA and EPA's decision on the program. ADEQ expects that any early applications will be processed for completeness only. Under this rule, the permit processing fees in Article 10 begin upon the effective date of this rule. ADEQ expects a rule for CCR licensing time frames in 18 A.A.C. 1 to be effective by CCR program approval.

II.b. Language from EPA's proposed permit rule. EPA proposed a federal CCR permitting rule in February 2020 for Indian country and states not participating with their own program. In R18-13-1010, ADEQ used some of EPA's proposed language for its own application requirements. Using EPA's proposed permit application language as a foundation for ADEQ's language will reduce complexity should CCR facilities be required to submit applications to both EPA and Arizona at the same time. It also allows Arizona's program to be evaluated by EPA as a similar program with familiar features. At the time this rule was finalized, EPA estimated that it would finalize its proposed permitting rule in late 2024. It is possible that ADEQ's CCR permits rule will be effective around the same time as EPA's. If EPA program approval occurs quickly, CCR facilities in Arizona may be required to submit applications to both EPA and ADEQ, as well as ADWR for new or modified surface impoundments. By using EPA language and elements, it is likely that a certain amount of work done for one permitting authority will work for the other.

II.c. Signatory requirements for owners and operators. Throughout EPA's 40 CFR 257, subpart D, requirements are phrased in terms of "owner or operator". ADEQ followed this approach in this CCR rule. If the owner and operator of a CCR unit are separate persons, only one person is required to discharge any specific responsibility, but both are liable in the event of noncompliance. An exception to this is signing and certifying the permit application,

where, like EPA's proposed permitting rule at 40 CFR 257.130(a), this proposed rule would require both to sign, unless an agreement is provided to ADEQ that one will sign and certify for the other.

II.d. Pre-application public meeting. Although Arizona's four established CCR facilities are presumably well known in the surrounding community, a state permit program for CCR units focusing on groundwater and safety is potentially unfamiliar. This rule requires that the owner or operator hold a pre-application public meeting with the purpose of informing the local community about the permit they are seeking and addressing any questions and concerns. ADEQ believes this public meeting, once every 10 years, will minimize public misunderstandings during possible phase out of units, addition of new units, closure strategies, and any corrective action.

EPA has successfully employed the requirement for a pre-application public meeting since adding it to the RCRA Expanded Public Participation Rules in 1995. The most important goal ADEQ hopes to achieve from the pre-application meeting requirement is the opening or continuation of a dialogue between the permit applicant and the community. We believe that the applicant should open or restart this dialogue at the beginning of the permitting process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications. The pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of CCR management and the facility's operations.

III. Financial assurance. A.R.S. § 49-770, as amended in 2022 by Ch. 178, requires financial assurance for CCR facilities. ADEQ modeled the CCR financial assurance rules in Article 17 after those in Arizona's existing Aquifer Protection Permit (APP) program. All of Arizona's active CCR facilities already have financial assurance for their non-CCR units under their current APP. After Ch. 178 removed the requirement for CCR units to have an APP, some facilities removed the CCR units from their APP but all of them had financial assurance for their CCR units while they were under an APP. Ch. 178 modified the financial assurance requirement for CCR units to recognize that these CCR units were still, or had just

been, covered by financial assurance under an APP. R18-13-1020 allows temporary compliance with financial assurance requirements at existing CCR facilities until a CCR permit is issued, through submittal of the demonstrations that were made pursuant to the APP. See the explanation of R18-13-1020 for more detail.

IV. Transition from Governor's Regulatory Review Council (GRRC) approval to CCR program approval. Although this rule was officially effective about 60 days after GRRC approval, by its terms, most of this rule, including the requirement to submit a facility permit application, would not be effective until CCR program approval by EPA. After GRRC approval, ADEQ would prepare its program submittal to EPA, and any early permit applications would be accepted and processed for completeness. ADEQ expects a licensing time frame rule for CCR permits to be effective by CCR program approval. New construction or modifications of CCR units would continue to be processed under EPA and, for most surface impoundments, ADWR rules.

V. Transition from CCR program approval until permit issuance. After CCR program approval, CCR facility permit applications that have not already been submitted are required within 180 days, and ADEQ rules and oversight related to groundwater monitoring and CCR surface impoundment safety become effective. After CCR program approval, new surface impoundments and any changes to existing CCR surface impoundments will continue to be processed by ADWR until the impoundment is covered by an ADEQ permit. (See A.R.S. § 45-1201(1)(f)). However, before permit issuance, construction can begin on new surface impoundments without a permit modification as provided in R18-13-1010(B)(2), if it is consistent with any Arizona Department of Water Resources authorization needed.

VI. EPA's CCR "Legacy Rule". The proposed, and this final, Arizona CCR rule do not include changes made by EPA's 2024 Legacy Coal Combustion Residuals Surface Impoundments and CCR Management Units Rule that will be effective November 4, 2024. Any "legacy units" and "coal combustion residuals management units" (CCRMUs) in Arizona will be regulated by EPA under the newly revised Subpart D, once it is effective.

VII. Section-by-Section explanations

R18-13-1001. Applicability; Incorporation by Reference; General Provisions. R18-13-1001 contains four basic parts. Subsection (A) provides that the majority of the Article is not effective until EPA approves the CCR permit program. The earlier effective date for the list in (A)(1) allows processing of any early permit applications ADEQ receives as permitted under A.R.S. § 49-891(F). Subsection (B) provides information on the incorporation by reference model used in the rule. It is very similar to how incorporation by reference is used in ADEQ's hazardous waste rules at R18-8-260(A) and (B). Subsection (C) incorporates by reference a group of EPA CCR regulations under the basic heading of General Provisions and notes two minor exceptions. Subsections (D) through (F) contain ADEQ's modifications and additions to the EPA definitions in § 257.53. A separate section is used in subsection (F) to group together the definitions that originated in ADWR rules related to dam safety.

R18-13-1002. Location Restrictions. R18-13-1002 incorporates EPA's location restrictions as provided in §§ 257.60 through 257.64 and adds, in subsections (B), (C), and (D), additional items related to §§ 257.62, 257.63, and 257.64 from ADWR rules. Subsections (B), (C), and (D) apply only to new surface impoundments and lateral expansions of those existing surface impoundments that are larger than the size limits in subsection (E).

R18-13-1003. Design Criteria. R18-13-1003(A) through (E) incorporates EPA's detailed design standards for CCR units almost without change, only removing a height restriction for vegetation on surface impoundments as recommended by EPA after a federal court decision. Subsection (F) modifies EPA's spillway capacity requirements by requiring owners or operators to evaluate both ADWR's existing criteria for spillway capacity and EPA's, and use whichever capacity requirement is greater.

R18-13-1003.01. Additional Design Criteria for New CCR Surface Impoundments and Lateral Expansions of CCR Surface Impoundments. R18-13-1003.01 provides additional design requirements to R18-13-1003 that need to be met by new or lateral expansions of CCR surface impoundments. These design requirements cover embankment stability as it relates to how seepage flows through the embankment, how earthquake impacts are managed, how seepage and drains need to be designed, and minimum overall factors of safety. The requirements in this Section originate from ADWR rules and apply only to new

surface impoundments and lateral expansions of those existing surface impoundments that are larger than the size limits in subsection (D).

R18-13-1003.02. Additional Emergency Action Plan Requirements for CCR Surface Impoundments. R18-13-1003.02 adds to the emergency action plan (EAP) content and implementation requirement that EPA promulgated in §§ 257.73(a)(3) and 257.74(a)(3) by listing additional criteria from ADWR rules. The additional EAP content requirements under subsection (A) clarify notification and review requirements, triggering events, and the requirement for the EAP to be certified by a qualified professional engineer. Subsection (B) presents additional specific requirements pertaining to the implementation of the EAP and what actions need to be taken by the owner or operator of a CCR surface impoundment following specific triggering events. As in previous Sections adding ADWR requirements, the last subsection lists small structures that would be exempt from the Section.

R18-13-1004. Operating Criteria. R18-13-1004 incorporates by reference all of EPA's regulations that apply to operation of CCR landfills, CCR surface impoundments, and lateral expansions of CCR landfills. The additions in subsections (B) through (I) apply to CCR surface impoundments and their lateral expansions and originate in ADWR rules. ADEQ has only added requirements from ADWR rules where they may be more stringent than EPA's requirements in 40 CFR 257, subpart D.

R18-13-1005. Groundwater Monitoring and Corrective Action. R18-13-1005 incorporates by reference the groundwater monitoring and corrective action requirements of 40 CFR 257.90 through 257.98, subject to some amendments and clarification. These EPA regulations address groundwater contamination that could be caused by coal ash and the steps to be taken at that point.

Subsection (A) incorporates by reference 40 CFR 257.90 through 257.98 which require groundwater monitoring system(s), program(s), and related criteria for all CCR units. The initial system of monitoring, required for all CCR units, is called detection monitoring. The one section not incorporated is 257.90 (g) regarding suspension of groundwater monitoring. However, amendments are made to the other EPA sections.

Subsection (B) amends 40 CFR 257.94(a) such that ADEQ can require detection monitoring to include additional monitoring requirements for non-CCR related contaminants not otherwise listed in Appendix III of EPA's rule. In such instances, subsection (B) further clarifies that potential additional contaminant monitoring for non-CCR related constituents would be administered consistent with the requirements of the previously applicable aquifer protection permit program under A.R.S. Title 49, Chapter 2, Article 3, and Articles 1 and 2 of 18 A.A.C. 9.

Subsection (C) amends 40 CFR 257.94(e)(2) in the instance a statistically significant increase (SSI) over background or an exceedance of a water quality standard is observed and the owner or operator elects to proceed with an alternate source demonstration (ASD). The owner or operator is then required to notify ADEQ within 7 days of that decision. Subsection (C) further provides for the Director's approval or disapproval of the forthcoming ASD. Early notification of a pending ASD, within this and subsequent subsections, is intended to afford timely consideration of ASDs and address the constraints of EPA's established time frames. ASDs certified as such by the facility's qualified professional engineer and completed within the 90 days pursuant to 40 CFR 257.94(e)(2), allow for detection monitoring to continue. Any subsequent disapproval by the Director would trigger assessment monitoring within 90 days after the date of disapproval, consistent with 40 CFR 257.95(b). This allows the facility to continue with detection monitoring during ADEQ's evaluation of the ASD, as it would have before program approval. Subsequent ASDs, determined by the certifying engineer to be directly related to a previously demonstrated alternate source, may reference previous related ASDs for other constituent(s), however each ASD should stand on its own. ADEQ notes that approval or disapproval of an ASD under this subsection or subsection (D) would be an appealable agency action under A.R.S. § 41-1092 *et seq.*

Subsection (D) amends 40 CFR 257.95(g)(3)(ii) similarly for an ASD conducted during assessment monitoring. If subsequently disapproved by the Director, an assessment of corrective measures must be initiated within 90 days from the date of the Director's disapproval, as provided under 257.96(a). Subsection (D) also modifies 40 CFR

257.95(g)(3)(ii) such that if a facility is planning to conduct an ASD under this section, ADEQ should be notified within 7 days of this decision.

Subsection (E) modifies 40 CFR 257.95(g)(4) to provide for Director disapproval of ASDs where, if an ASD is not approved, the operator is to then evaluate corrective measures as outlined in 40 CFR 257.96.

Subsection (F) amends 40 CFR 257.95(h) to provide for groundwater protection standards consistent with aquifer water quality standards under 18 A.A.C. 11, Article 4 or EPA's maximum contaminant levels (MCLs), whichever is more stringent. For those contaminants without either aquifer water quality standards or MCLs, the established background concentration would be the limitation. Where background concentrations exceed aquifer water quality standards or MCLs the background concentration would be the limitation.

Subsection (G) amends 40 CFR 257.97 regarding remedy selection to provide for Director approval and incorporation of a remedy into the facility permit as a major modification.

Subsection (H) amends 40 CFR 257.98 regarding implementation of a correction action program to accommodate Director approval of a notification of remedy completion.

R18-13-1006. Closure and Post-Closure Care. This Section incorporates by reference the closure, post-closure care and inactive surface impoundment requirements of 40 CFR 257.100 through 104. The only addition is that the inspection and monitoring requirements from 40 CFR 257.83(b) are specified to continue throughout the post-closure care period.

R18-13-1007. Recordkeeping, Notification, and Posting of Information to the Internet. R18-13-1007 incorporates by reference the recordkeeping, notification, and posting of information to the internet requirements of 40 CFR 257.105 through 107. Subsection (A) incorporates by reference 40 CFR 257.105 through 257.107, subject to the modifications in the following subsections. These federal regulations require each CCR facility to maintain an operating record, post specific documents to the facility's CCR website, and notify ADEQ when certain documents are available. Subsection (B) amends 40 CFR 257.105(f) to recognize an Arizona-only source of Emergency Action Plan requirements. Subsection (C) amends 40 CFR 257.105(h)(1) to clarify that all records of groundwater monitoring and corrective action reports must be maintained in the operating record. Subsection (D) adds 40

CFR 257.105(k) requiring a CCR facility to determine and maintain in the operating record the amount of CCR beneficially used in the previous calendar year, based on when the product leaves the site. Subsection (E) adds 40 CFR 257.105(l) requiring a CCR facility to place financial assurance related information in the operating record. Subsection (F) adds 40 CFR 257.106(k) requiring a CCR facility to notify the Director when beneficial use information has been placed in the operating record. Subsection (G) adds 40 CFR 257.107(k) requiring the CCR facility owner or operator to place the entire CCR facility permit on the facility's CCR website and to update the permit with any approved modifications within 30 days of approval.

R18-13-1008. 40 CFR 257, Appendices III and IV. R18-13-1008 incorporates by reference the groundwater monitoring constituents required for detection monitoring and assessment monitoring that are listed in Appendices III and IV of 40 CFR 257.

R18-13-1010. Permit Application Requirements for CCR Facilities. R18-13-1010 presents the requirements for a CCR facility permit application.

Subsections (A) and (B) state the requirement for an application and the timing for its submittal. After ADEQ receives program approval from EPA, initial permit applications are due to ADEQ within 180 days. After program approval, construction of a new CCR unit or a lateral expansion of a CCR unit may not begin without authorization in facility permit, except as provided in subsection (B)(2). If the application includes constructing or modifying a CCR surface impoundment, additional requirements apply from R18-13-1010.01.

Subsection (C) requires an applicant for a CCR facility permit to hold a public meeting to inform the local community about the permit application and the facility. After public comment, ADEQ added that the meeting may be held after the applicant receives notice from ADEQ that the application is administratively complete. The permit applicant must provide public notice of the meeting to the community and must notify ADEQ of the meeting at least 30 days in advance.

Subsection (D) specifies the components of a CCR facility permit application to include design and operating information, groundwater and location information, related maps and

drawings, plans demonstrating compliance with all sections of 40 CFR Subpart D, financial assurance, and the applicable fee.

Subsections (E) and (F) address completeness of the application and refer to ADEQ's existing rules for licensing timeframes for completeness determinations and to R18-13-1018 for posting of a notice to ADEQ's website.

Subsection (G) addresses the transition of permitting from ADWR to ADEQ for dam modifications and puts ADEQ on early notice, perhaps before an application for a CCR permit, of a CCR surface impoundment modification in progress with ADWR that began after this proposed rule was published.

<u>R18-13-1010.01. Additional Application Requirements for Constructing or Modifying CCR Surface Impoundments for Applications Submitted After CCR Program Approval.</u> This Section adds application requirements for special situations covered by ADWR rules to the application requirements already provided in R18-13-1010. R18-13-1010.01 applies to applications specific to new or modified CCR surface impoundments permitted by ADEQ after CCR program approval. ADEQ recognizes that in some cases an application would have been also submitted to ADWR. The notice required under R18-13-1010(G) will allow ADEQ to coordinate this.

The requirements in this Section all originate in ADWR rules. R18-13-1010.01 does not negate any requirement in R18-13-1010, where closure and post-closure documents for all CCR units are required to be submitted in subsection (D)(6)(e). It does not negate any requirement in R18-13-1006, which incorporates closure and post-closure requirements from 40 CFR 257 in their entirety without change. This Section does not apply to demonstrations under R18-13-1010(B)(2).

<u>R18-13-1011. Permit Contents.</u> R18-13-1011 addresses the contents and standard conditions of CCR facility permits. Subsection (A) lists conditions that will be incorporated into all CCR facility permits. Subsections (B) through (E) allow the Director to establish permit terms and conditions as needed and in accordance with A.R.S. Title 49, Chapter 4 and 18 A.A.C. 13, Article 10, to ensure no reasonable probability of adverse effects on safety, health or the environment from CCR facility operations. Subsection (F) requires each permit to

specify the safe storage level for each surface impoundment. This requirement is as stringent as ADWR's rules for dams. Subsection (G) states the fixed 10-year permit term required by statute. A CCR facility permit may not be extended beyond a 10-year term through permit modification. Instead, a CCR facility must submit a complete application to renew the permit as described in R18-13-1016.

R18-13-1012. Compliance Schedules. R18-13-1012 allows ADEQ to establish a schedule of compliance in a CCR facility permit under two general scenarios. Subsection (B) addresses future compliance activities that may be used, for example, to specify schedule requirements for corrective action activities or submittal of as-built drawings or final engineering reports. This subsection is similar to the schedule of compliance concept used in ADEQ's Aquifer Protection Permit program. Subsection C will be used when a facility will not be in compliance with one or more requirements of A.R.S. Title 49, Ch 4, or rules thereunder at the time the permit is issued. This schedule of compliance will be an enforceable sequence of steps that will allow the facility to return to compliance. Subsection (C) also allows for interim compliance dates that will not be longer than one year, posting of progress information on the facility's public website, and progress reporting to the Director.

R18-13-1013. CCR Facility Permit Issuance or Denial. R18-13-1013(A) states that the procedures in Article 10 related to permit conditions are applicable before EPA program approval except for any licensing timeframes adopted in 18 A.A.C. 1 which apply after program approval. Subsection (B) requires the ADEQ Director to provide the owner or operator with written notification of a final decision to grant or deny a permit and to include the applicable appeal rights. Subsections (C) and (D) state the reasons why the Director may deny a permit and requires the Director to issue an order requiring closure of the CCR units at the facility.

R18-13-1014. CCR Permit Transfer. R18-13-1014 specifies the requirements to transfer a CCR facility permit if there is a change of ownership or operational control for a CCR unit or facility. Subsection (A) requires a 30-day advance notice to ADEQ or notice as soon as practicable. The new owner or operator is required to submit a permit modification request to allow for ADEQ to review all of the items specified in subsection (B). Subsection (C)

clarifies that the original owner or operator is required to comply with the CCR facility permit until it is modified even if ownership or operational control has been transferred.

R18-13-1015. CCR Permit Termination. R18-13-1015 lists five reasons for which the Director may terminate a CCR permit after providing a notice and opportunity for hearing.

R18-13-1016. Permit Renewals. R18-13-1016 presents three requirements for renewing a CCR facility permit. In Subsection (A), an application must be submitted at least 180 days prior to expiration of the current permit. For a timely and complete application submittal, Subsection (B) allows for the existing CCR facility permit to be administratively extended until a new permit is issued. Subsection (C) requires the owner or operator to renew the permit throughout operation, closure, post-closure, or corrective action for a CCR unit.

R18-13-1017. Modifications of a CCR Facility Permit. R18-13-1017 specifies the three types of permit modifications (major, minor, and administrative) and the requirements for permit modifications. Subsections (A) through (D) are general standards for permit modifications initiated by the owner or operator or the ADEQ Director. Subsection (E) describes major permit modifications, intended to be used only for substantial changes to the facility permit including new CCR units, lateral expansions of existing CCR units, and selection of a remedy if the CCR unit is in corrective action. Subsection (F) lists several examples of minor modifications intended to be more routine changes to the CCR permit. Subsection (G) allows for administrative modifications to the permit. Subsection (H) states that the ADEQ Director may change the categorization of a CCR facility permit modification. Subsection (I) allows multiple modifications to be combined into one to streamline processing.

R18-13-1018. Public Notice Requirements for Permit Actions. R18-13-1018 states the requirements for ADEQ to notify the public of CCR facility permitting actions for initial or renewal permits as well as permit modifications. Initial or renewal permits and major modifications require ADEQ to provide a public notice of a proposed issuance or denial and to provide at least 30 days for comments on the proposed decision. A public hearing may be held if requested and if the ADEQ Director determines there is sufficient public interest. ADEQ must prepare a written response to comments received on the proposed CCR permit or major modification.

R18-13-1019. Compliance, ADEQ Inspections, Violations and Enforcement. This rule specifies ADEQ rights to enter the facilities and do inspections, and the purposes of inspections, including as noted in subsection (C) during work on surface impoundments. Subsection (G) comes from ADWR rules.

R18-13-1020. Financial Assurance Requirements. This rule allows temporary compliance with Financial Assurance (also called financial responsibility) at existing CCR facilities until a permit is issued through submittal of demonstrations that were made pursuant to an ADEQ Aquifer Protection Permit (APP). A.R.S. § 49-770(A) states that Article 11 solid waste facilities may not operate unless financial responsibility "has been demonstrated" within 180 days of "CCR program approval." A.R.S. § 49-770(C) allows 2 possible times for submittal of financial responsibility, with the latest required time being 180 days after CCR program approval. Without more, if a CCR facility waits 180 days after CCR program approval to submit financial responsibility, it could be stated that financial responsibility has not yet been "demonstrated", since there is not yet approval by the Department. However, A.R.S. § 49-770(C) adds that if the facility was already in operation before CCR program approval, it may continue to operate while the department reviews the submission of financial responsibility pursuant to its APP. In addition, A.R.S. § 49-770(D) adds that a demonstration already made for an APP purposes shall suffice, in whole or in part, for any demonstration required by A.R.S. § 49-770. Therefore, proposed R18-13-1020 requires CCR facilities to submit the most recent financial assurance demonstrations made for APP, and allows those previous demonstrations to be sufficient (suffice "in part") to satisfy A.R.S. § 49-770(C) so that the facilities may continue to operate during the department's review of the submission using 40 CFR 257, subpart D closure, post closure and corrective action standards. ADEQ anticipates that the financial responsibility demonstrations that were made for APP will have to be supplemented to satisfy the different and more detailed closure, post-closure, and if applicable, corrective action requirements from 40 CFR 257, and that discussions about these details will take place in the facility permit application process.

R18-13-1021. Fees. R18-13-1021 sets forth the fees and billing procedures for CCR facilities and permitting actions. In Subsection A, Table 2 specifies annual registration fees. In subsection (B), Table 3 presents initial and maximum fees for a CCR facility permit and

permit modification. Subsections (C), (D), and (E) state the billing procedure that ADEQ must follow during permitting actions. Subsection (E) also includes the hourly billing rate of $244 per hour for permitting activities and the procedure for annual adjustment of annual fees and the billing rate pursuant to United States Bureau of Labor Statistics Consumer Price Index tables.

R18-13-1701. Definitions. The intent for Article 17 is to include what is necessary to evaluate the financial assurance demonstrations for CCR facilities. R18-13-1701 includes the definitions that are used for APP financial assurance, unchanged, from R18-9-A203.

R18-13-1703. Financial Demonstrations for CCR Facilities. R18-13-1703 lays out what needs to be demonstrated for CCR facilities. This Article may be amended in separate rulemakings to apply to other types of solid waste facilities for which financial assurance may be required in the future. The three categories of cost are consistent with A.R.S.§§ 49-761(J) and 770(A).

R18-13-1704. Financial Assurance Mechanisms. Included in this Section are the content, terms and conditions for the mechanisms similar to APP rules but clarifying that costs are for closure, post-closure and corrective action. A catch-all provision in subsection (A)(9) allows other mechanisms to be used if approved by the Director, to provide flexibility should circumstances change.

8. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

No studies were reviewed by ADEQ. ADEQ notes that it examined materials posted by the four Arizona facilities it expects to require CCR facility permits that are posted on the facilities' CCR websites. These websites are required under 40 CFR 257, subpart D. ADEQ is proposing neither to rely or not rely on those materials for the evaluation or justification of these rules. For reader convenience, these websites are listed here.

Arizona Electric Power Cooperative, Inc.- https://ccr.azgt.coop/

Arizona Public Service Company- https://www.aps.com/en/Utility/Regulatory-and-Legal/Environmental-Compliance#Cholla

Salt River Project- https://environmental.srpnet.com/CCR/

Tucson Electric Power Company-https://www.tep.com/ccr/

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:

ADEQ separated the economic, small business, and consumer impacts of these rules into two major categories: 1) Those parts of the rules that would enact into Arizona rules nonprocedural standards that already apply; and 2) Additional requirements that would apply for the first time at some point after these rules are effective.

Existing requirements. These rules enact already existing standards from the United States Environmental Protection Agency (EPA) and the Arizona Dept. of Water Resources (ADWR) into ADEQ rules. ADEQ believes that where these CCR rules match existing standards, they do not have any direct negative impact on the four facilities in Arizona that will require a CCR facility permit. There are two groups of already existing standards:

1) 40 CFR 257, subpart D, for all CCR units. There will be no impact here because this rule is neither more or less stringent than this federal subpart for nonprocedural standards, and the Arizona CCR facilities are already subject to those federal standards.

2) Arizona Dept. of Water Resources (ADWR) rules at 12 A.A.C. 15, Article 12, that apply to CCR surface impoundments. Although these standards are stricter than 40 CFR 257, subpart D, there will be no impact here because surface impoundments at CCR facilities have already been subject to those ADWR rules, including the requirements in R18-13-1010.01 related to getting a license from ADWR.

ADEQ believes that because ADEQ will be replacing other agencies as the enforcing agency for standards that will remain the same, the rules will have a positive impact on the CCR facilities as well as the local community by enabling communication with a single, local agency. As an example, when cycling down and closing CCR units, a month delay can cost hundreds of thousands of dollars. A phone call to a state employee, who is not responsible for facilities in multiple states, and that may have already visited the site, is virtually certain to result in less delay. This advantage for CCR facilities will be offset in part by the permit processing and annual registration fees in this rule.

Additional requirements. Pursuant to statute, these rules create requirements for CCR facilities additional to those already existing in the following areas:

1) Aquifer protection standards developed under ADEQ statutes and rules for non-CCR wastestreams. (see R18-13-1005(B) and (F)). Although these standards are additional to 40 CFR 257, subpart D, there will be little to no impact here because CCR facilities were already subject to these standards under their ADEQ Aquifer Protection Permit (APP) and the final rule limits the stringency of any requirements in this area to what was previously required.

2) New ADEQ permitting requirements. There are currently no permitting requirements for CCR units in Arizona. The requirement that CCR units be covered under an APP was removed in 2022 by Ch. 178 as a consequence of their being regulated under 40 CFR 257, subpart D. ADWR currently requires licenses for CCR surface impoundments because they are classified as dams. The new permitting requirements are contained in R18-13-1010 through R18-13-1021.The ADWR licensing requirement for CCR surface impoundments ends when an impoundment is covered by an ADEQ permit under an EPA approved program. See A.R.S. § 45-1201(1)(f).

Federal law requires that CCR units be eventually covered under either a federally approved state program or the federal permit program. In February, 2020, EPA proposed its permitting program in a new 40 CFR 257, subpart E, but it is currently on an uncertain timetable. There is no federal or state requirement that ADEQ match the federal permitting rules that will be adopted in subpart E. However, ADEQ has made its permitting rules match EPA's proposed rules where possible to avoid unintended extra impact should both apply at the same time

when final. This strategy also increases confidence in EPA's evaluation of the Arizona program. In some areas however, ADEQ's own permitting requirements may exceed, or at least be additional to, what will be required under future EPA permitting requirements for non-participating states. These extra requirements may impact Arizona's CCR facilities.

3) Financial assurance. There is no federal requirement that CCR facilities provide financial assurance. However, state authorizing legislation for this rule has required it for Arizona CCR facilities, and it is included in R18-13-1020. ADEQ notes that these facilities were already meeting financial assurance requirements for their CCR units under previous APPs, and that the legislature has indicated its intent that ADEQ recognize this financial assurance, "in whole or in part." (See A.R.S. § 49-770(D)) Thus, any impacts of the financial assurance requirement will be lessened to some degree. However, ADEQ expects that the impact of financial assurance on CCR facilities may be greater for CCR units than what was required for their APP because of the more detailed closure, post-closure and corrective action requirements that exist in 40 CFR 257, subpart D.

4) Annual registration fees and permit processing fees. These fees are set out in R18-13-1021. Permit processing fees could begin after this rule is effective if any facility opts to apply early, although ADEQ expects most of these impacts to begin after CCR program approval. The annual registration fees for CCR facilities begin after CCR program approval. The annual fees are designed to cover ADEQ's non-permit related costs in administering the state CCR program. EPA proposed no fees in its CCR permit program.

<u>Cost benefit analysis.</u> ADEQ estimated the additional annual cost to implement the CCR permit program at $158,760, separate from the cost of processing permits. ADEQ based the annual registration fees on this estimate. Three additional full-time equivalent employees (FTEs) were estimated to be necessary to implement the CCR program: an inspector, a permit writer, and a geotechnical engineer. All but the permit writer have already been hired. All of the FTE permit writer's time on CCR will be billed processing permits.

Under A.R.S. § 49-104(B)(17), ADEQ fees must "be fairly assessed and impose the least burden and cost to the parties subject to the fees." ADEQ believes its estimate of the annual cost of the program not covered by permit processing fees is the lowest possible and therefore imposes the least burden and cost. Further, the annual registration fees in

R18-13-1021(A) are based on the number and complexity of CCR units at each facility. This formula was arrived at after discussion with the affected stakeholders, and it is roughly proportional to the amount of time ADEQ will likely spend relative to each facility. In ADEQ's judgment, it is the best way to fairly assess the annual registration fees.

The hourly rate in R18-13-1021(E)(1) covers "the cost of administrative services and other expenses associated with evaluating" permits. It is based not only on the state's total cost for the employees billing the hours, but also a portion of the operational overhead of the Solid Waste section's employees not directly assigned to CCR facilities full time, such as supervisors, other engineers, and administrative staff. ADEQ estimated the total number of hours the permit writer would be able to bill annually after comparing its experience processing hazardous waste permits which are similar in length and complexity and factoring in annual leave, sick leave, required training and other types of nonbillable time.

As a consequence of ADEQ setting its annual registration and permit processing fees at a level imposing the least burden on stakeholders, ADEQ had to plan for possible increases in its costs due to inflation. An annual adjustment to these fees based on a regional consumer price index was added at R18-13-1021(E)(4) in order for ADEQ to maintain its obligations under the program while keeping the cost at the least burdensome level.

The overall cost to ADEQ is expected to be balanced by the fees it collects. As explained earlier, there are significant potential benefits to both the local community and CCR facilities to having a single local agency handle all aspects of the federal CCR program. In spite of the fees necessary to cover the cost of the program, Arizona's CCR facilities have supported ADEQ's development of a state permit program as early as 2018, when CCR permitting was planned to be added to the Aquifer Protection Permit in ADEQ's Water Quality Division. ADEQ believes the overall benefits for all parties involved exceed the overall costs.

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

1. In R18-13-1002(E), R18-13-1003(G) and R18-13-1010(G), ADEQ changed "{proposed rule date}" or "{insert proposed rule date}" to "July 12, 2024".

2. In R18-13-1010(B)(2), ADEQ clarified that ADWR's approval to construct is independently required when seeking ADEQ approval for certain actions before a facility permit has been issued. ADEQ clarified this in R18-13-1010(B)(2)(a) as follows:

"a. For a CCR surface impoundment before a CCR facility permit has been issued for that facility, the owner or operator has obtained approval to construct from ADWR and demonstrates to the satisfaction of the Director that commencing construction before approval is necessary to comply with 40 CFR 257, as incorporated in this Article;"

Based on comments, ADEQ made the following changes to the rule text:

1. Modified R18-13-1010(C) to add an alternate time for the public meeting:

Proposed:

> **C.** Prior to submitting an initial or renewal CCR facility permit application, the owner or operator shall hold a public meeting in order to solicit questions from the community and inform the community about the permit to be applied for. The owner or operator shall notify ADEQ at least 30 days before the meeting, provide adequate public notice for the meeting, and submit a summary of the meeting to ADEQ.

Final:

> **C.** The owner or operator shall hold a public meeting in order to solicit questions from the community and inform the community about its intended permit at one of the times listed below. The owner or operator shall notify ADEQ at least 30 days before the meeting, provide adequate public notice for the meeting, and submit a summary of the meeting to ADEQ:
>
> 1. Within 90 days after receiving notice from the Director that its application is administratively complete, or
> 2. Prior to submitting an initial or renewal CCR facility permit application.

2. In R18-13-1017(F)(7), ADEQ added the last clause as follows: 7. Replace monitoring equipment, including a well, if the replacement results in equal or greater monitoring

effectiveness, but not including routine maintenance or replacement of well components and related equipment;

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

ADEQ received six written comments, four from the Arizona utilities that would be seeking CCR facility permits, one from an environmental organization, and one from a school district near a CCR facility. The four utilities expressed strong support for ADEQ seeking authorization for the federal program with this rule. The environmental organization and school district expressed concern and generally opposed ADEQ seeking authorization. The comments are summarized and responded to individually below.

Arizona Electric Power Cooperative (AEPCO)

Comment: General support for the AZ CCR program, especially as related to past APP regulation and local understanding of groundwater systems in the desert southwest.

Comment: **State Approvals of Certain CCR Activities May Unsettle CCR Rule Compliance.** AEPCO continues to have concerns regarding the implementation of ADEQ approvals of Alternate Source Demonstrations (ASDs)." R18-13-1005(C) AEPCO presents concern for ADEQ approval / disapproval of groundwater ASDs within the timelines required by EPA rule. Disapproval falling outside of the timelines required by EPA could "cause disorder" in the transitions between groundwater monitoring phases. A preference for continued self-implementation and certification, as existing under the EPA umbrella, is implied. AEPCO acknowledges the 7-day advance notice of pending ASDs will help but they do not believe ADEQ's fully informed considerations for ASD approvals will be possible within the timelines defined by EPA rule.

RESPONSE: As drafted, R18-13-1005(C) accommodates transitions between detection and assessment monitoring where disapprovals occur. This allows for

EPA required timelines to be met regardless of ADEQ processing time. ADEQ's intent is to conduct ASD reviews as timely as possible. The move to a more stringent level of groundwater monitoring is not required until ADEQ disapproves of an ASD as explained in the preamble discussion of R18-13-1005.

Comment: "**A Straightforward Appeal Process for ASDs Is Needed" "The Proposed Rule provides no clear path for appeals of ASDs. R18-13-1013 provides for appeals of a <u>permitting decision</u>.**" (Emphasis added) Consider adding clarifying text with a time frame for appeal and "stay" accommodation while appeals are considered.

RESPONSE: ADEQ agrees that the Director's decision to approve or disapprove an ASD under R18-13-1005(C) would be an appealable agency action under A.R.S. Title 41, Article 10, which controls stays and time frames. The preamble summary of R18-13-1005 now contains this statement.

Comment: "Permit Modifications are Unnecessary and Disruptive for Site Maintenance Activities" R18-13-1017(F). AEPCO suggests the routine maintenance items be specifically excluded from consideration as a permit modification. It is suggested the language of R18-13-1017 (F) is too wide in scope. Additional language is suggested for R18-13-1017(F)(7): "Replace monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness, but not including routine maintenance or replacement of well components and related equipment."

RESPONSE: This concern was considered by ADEQ in previous engagements and ADEQ has stated that routine maintenance is not a subject for minor permit modifications. A previous item was dropped from the draft rule to satisfy this ongoing concern. ADEQ agrees and has placed the requested clarification in the rule.

Comment: "Pre-State Permit Program Certifications Should be Preserved" It is suggested that previously qualified professional engineer (QPE) certifications should be adopted into the ADEQ program without retroactive review and approval. AEPCO requests clarification that ADEQ does not intend to reopen

previous QPE certifications and that the program be prospective only regarding QPE certifications.

RESPONSE: ADEQ must consider all permit related certifications and documentation during the CCR permit application process. EPA has expressed concern that, nationally, some QPE certifications may potentially be inadequate. As such, ADEQ cannot accept previously prepared certifications at face value. Any shortcomings identified during the permit application process must be addressed for permit approval to occur.

Comment: "Public Meeting Requirements Should be Revised" R18-13-1010(C) AEPCO asks that the timing and style of the pre-application public meeting described in R18-13-1010(C) be reconsidered. They argue that holding a public meeting prior to application submission is too early and that the timing of this public meeting would be best realigned to coincide with permit application receipt by ADEQ. It is further argued that holding a public meeting prior to application submission could risk confusing the public as the permit application evolves. AEPCO recommends a meeting style consistent with past practices where both ADEQ and the regulated entity engage the public jointly.

RESPONSE: ADEQ disagrees with the arguments of the electric utility commenters that any public meeting on a utility's CCR permit has to be led by ADEQ, or more generally, that all public engagement related to the CCR activities on site should be managed by ADEQ. EPA has successfully employed the requirement for a pre-application public meeting since adding it to the RCRA Expanded Public Participation Rules in 1995. The most important goal ADEQ hopes to achieve from the pre-application meeting requirement is the opening or continuation of a dialogue between the permit applicant and the community. We believe that the applicant should open or resume this dialogue at the beginning of the permitting process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications. The pre-application meeting should provide an open, flexible, and informal occasion for the

applicant and the public to discuss various aspects of CCR management and the facility's operations. The pre-application public meeting allows the public to engage directly with the facility and learn about the elements of the application and to express any concerns they have about design, monitoring, corrective action, notifications, etc. Both the Department and the current administration have highlighted public engagement and this is one component that will be beneficial for the new program.

In light of commenters' suggestions that the required public meeting be moved to a different time period, ADEQ has added to the rule an alternate time when the meeting may be held - within 90 days of the owner or operator receiving notice from ADEQ that its application is administratively complete.

Salt River Project

Comment: SRP appreciates the work conducted by the agency to support this rulemaking.

Comment: SRP requests that ADEQ revise R18-13-1010(B)(2) to allow construction of proposed facilities to proceed "at risk" while a facility goes through a new facility permitting process. SRP states that this aligns with the agency's APP program regulations.

RESPONSE: This was addressed in the NPRM Part V (Transition from Program Approval to Permit Issuance) and in the rule at R18-13-1010(B)(2). The intent was to allow SRP to move forward with construction at-risk if construction had to begin on a new unit(s) before program approval or before the first CCR permit can be issued by ADEQ. ADWR's authority for surface impoundments that are dams would still be in effect. Note that ADWR allows no "at-risk" construction. SRP is considering incised impoundments that would not require ADWR approval. ADEQ understands that SRP's construction schedule may depend on the timing of EPA's final decision to take an action related to SRP's unlined impoundment.

Comment: SRP requests that R18-13-1010(C) be removed. SRP supports public

participation in the permitting process, however, ADEQ has not provided the legal basis for R18-13-1010(C), which requires the owner or operator to hold a public meeting to solicit questions from the community and inform the community of a proposed permit application prior to submitting an application for an initial or renewed CCR facility permit. This imposes a new regulatory burden on permittees. Further, SRP states that these proposed and novel requirements in R18-13-1010(C) for public involvement before formal agency engagement go beyond the federal regulations applicable to CCR units and are a marked departure from the public involvement requirements under other programs administered by ADEQ. SRP also believes that engaging the public before a project is fully defined may cause confusion and extend permitting timelines. SRP notes that the rule includes ample opportunities for participation for the public after a project has been defined by ADEQ under R18-13-1018 in which ADEQ is to provide public notice.

Response: ADEQ disagrees with the arguments of the electric utility commenters that any public meeting on a utility's CCR permit has to be led by ADEQ, or more generally, that all public engagement related to the CCR activities on site should be managed by ADEQ. EPA has successfully employed the requirement for a pre-application public meeting since adding it to the RCRA Expanded Public Participation Rules in 1995. The most important goal ADEQ hopes to achieve from the pre-application meeting requirement is the opening or continuation of a dialogue between the permit applicant and the community. We believe that the applicant should open or resume this dialogue at the beginning of the permitting process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications. The pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of CCR management and the facility's operations. Both the Department and the current administration have highlighted public engagement and this is one component that will be beneficial

for the new program.

In light of commenters' suggestions that the required public meeting be moved to a different time period, ADEQ has added to the rule an alternate time when the meeting may be held - within 90 days of the owner or operator receiving notice from ADEQ that its application is administratively complete.

Comment: SRP requests that R18-13-1017(F)(3)(c), under minor permit modifications, be removed. Alternate source demonstrations (ASDs) for statistically significant increases (SSIs) pertaining to naturally occurring conditions should not require a minor permit modification, as this type of ASD does not lead to a change in a facility's groundwater sampling and analysis program (i.e., the facility remains in detection monitoring, rather than commencing assessment monitoring).
Response: R18-13-1017(F)(3)(c) requires a facility's assessment of corrective measures to be submitted for approval as a minor permit modification, not the ASD. Subsection (F)(3)(a) requires a change in the method for statistical analysis to be approved by ADEQ as a minor permit modification. ASDs, although requiring approval by ADEQ, are not required to be submitted as permit modifications. The technical analysis required for an ASD and the method of calculating an SSI are critical to determining whether or not groundwater had been impacted by CCR units. EPA has commented extensively on many facilities' ASDs and uses of SSI calculation methods nationwide.

<u>Tucson Electric Power</u>
Comment: General appreciation that ADEQ has developed the program and for the stakeholder process. Acknowledgment that ADEQ is the appropriate agency to implement CCR permitting in Arizona.
Comment: Move the pre-application public meeting hosted by the applicant from R18-13-1010(C) to R18-13-1018(A). This would allow the public meeting to coincide with the public notice that an application has been received by

ADEQ. This improves the timeliness of the meeting - an actual permit application has been submitted and the permitting process is underway. ADEQ should participate in the meeting.
Response: ADEQ disagrees with the arguments of the electric utility commenters that any public meeting on a utility's CCR permit has to be led by ADEQ, or more generally, that all public engagement related to the CCR activities on site should be managed by ADEQ. EPA has successfully employed the requirement for a pre-application public meeting since adding it to the RCRA Expanded Public Participation Rules in 1995. The most important goal ADEQ hopes to achieve from the pre-application meeting requirement is the opening or continuation of a dialogue between the permit applicant and the community. We believe that the applicant should open or resume this dialogue at the beginning of the permitting process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications. The pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of CCR management and the facility's operations. Both the Department and the current administration have highlighted public engagement and this is one component that will be beneficial for the new program.

In light of commenters' suggestions that the required public meeting be moved to a different time period, ADEQ has added to the rule an alternate time when the meeting may be held - within 90 days of the owner or operator receiving notice from ADEQ that its application is administratively complete.

<u>Arizona Public Service</u>
Comment: Supportive of ADEQ's work towards getting an EPA-authorized CCR program.
Comment: Reiterates their concerns over the pre-application public meeting

required by R18-13-1010(C). APS recommends that ADEQ lead all public engagement associated with the program in accordance with its own requirements. This also allows the public to correspond directly with the responsible regulatory agency, and not APS. APS recommends that ADEQ hold this public meeting after preparation of the draft permit.
Response: ADEQ disagrees with the arguments of the electric utility commenters that any public meeting on a utility's CCR permit has to be led by ADEQ, or more generally, that all public engagement related to the CCR activities on site should be managed by ADEQ. EPA has successfully employed the requirement for a pre-application public meeting since adding it to the RCRA Expanded Public Participation Rules in 1995. The most important goal ADEQ hopes to achieve from the pre-application meeting requirement is the opening or continuation of a dialogue between the permit applicant and the community. We believe that the applicant should open this dialogue at the beginning of the permitting process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications. The pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of CCR management and the facility's operations. Both the Department and the current administration have highlighted public engagement and this is one component that will be beneficial for the new program.

In light of commenters' suggestions that the required public meeting be moved to a different time period, ADEQ has added to the rule an alternate time when the meeting may be held - within 90 days of the owner or operator receiving notice from ADEQ that its application is administratively complete.

<u>Joseph City Unified School District</u>
COMMENT: The Superintendent of this school district, which is near a coal ash

pond, asked that ADEQ not take over the CCR program unless it can assure citizens that Arizona regulations will not be weaker in any respect than current federal regulation, also stating his concern that the state may not have the staffing and expertise comparable to the experience and resources of the federal EPA, especially in light of recent state budget cuts. Finally, he cited a news story from several years ago that commented on the possibility that citizen suits would not be available if ADEQ is approved to run the program.

RESPONSE: Under federal law, EPA may not approve a state to implement the federal CCR program unless the state program requires each ash pond or landfill to achieve compliance with the federal regulations or such other state criteria EPA determines to be at least as protective. EPA has already refused to approve one state program and has only approved three.

ADEQ has already hired staff to evaluate dam safety and water quality issues related to this CCR rule to assure that it will be at least as protective as EPA regulations. In addition, ADEQ aquifer protection staff have been monitoring all four coal fired power plants subject to this rule for years, making ADEQ more familiar with the actual sites than EPA. A system of fees charged to the power plants is included in the ADEQ rule to ensure that the program is insulated from current or future state budget issues.

In spite of the news story questioning whether citizen suits would still be available with Arizona implementing the federal CCR program, citizen suits are permanently in place even with state authorization, not only in the CCR program ,but in every other program under the Resource Recovery and Conservation Act (RCRA). It would not be legally possible to eliminate these suits, and in fact a number of citizen lawsuits have been, and will likely continue to be filed, with regard to the CCR regulation and state CCR programs.

ADEQ recognizes the land, water, and labor that local communities have contributed to provide electricity to the state for decades and will be in the best position to protect those interests.

<u>Sierra Club</u>

Comment: ADEQ should not assert primacy over coal ash regulation and enforcement as the Agency is understaffed and EPA has already made significant efforts in enforcing relevant federal requirements.
Response: ADEQ believes the fees contained in the proposed rule are sufficient to support the program indefinitely in spite of periodic state budget tightening. In addition, the proposed rule contains financial assurance requirements missing from the federal program. The proposed rule maintains the requirements of the self-implementing federal CCR rule while additionally incorporating components of the Aquifer Protection Program (APP) and ADWR dam safety rules that currently apply to CCR units in Arizona. The final CCR rule will allow for a single, streamlined permit program for CCR units that meets applicable federal and state requirements for CCR management, aquifer protection, and dam safety. The support for ADEQ's authorization over the last two administrations recognizes ADEQ's extensive knowledge of the unique geologic and hydro geologic site conditions across Arizona. ADEQ is the most appropriate regulatory agency to implement the CCR Program.

Comment: Legacy Rule. This rule incorporates 40 CFR 257, Subpart D, as of December, 2020, however in May 2024 EPA amended Subpart D by adopting the CCR "Legacy Rule", providing for regulation of non-operating coal ash units originally outside of 2015 Subpart D regulation. ADEQ's rule does not address and is silent on the 2024 Legacy Rule. Sierra Club finds that the rules do not specifically state "does not include any later amendments or editions of the incorporated matter", although the rule does refer to Subpart D "as revised December 14, 2020 (and no future editions)." Sierra Club requests specifying language that this rule does not include matters covered by EPA's 2024 CCR Legacy Rule amendments to Subpart D. Sierra Club notes two coal ash units that may be subject to the Legacy Rule (Coronado power plant site). Sierra Club interprets this silence to the Legacy Rule to mean "legacy units" would remain under EPA regulation per 2024 Legacy Rule amendments.
Response: Once EPA's new legacy rule becomes effective (November 5, 2024)

Legacy Units and Coal Combustion Residuals Management Units (CCRMUs) will be under the authority of EPA. Since September 2022, (see Guiding Principles and Features on ADEQ's website) ADEQ indicated its intent to use December 14, 2020 as the cutoff date for EPA rule changes. All draft rules and this proposed rule have also indicated that with the statutorily required phrase "(and no further editions)". ADEQ has placed a small section clarifying its intent with EPA's Legacy rule in the preamble to this final rule.

Comment: In several areas, the proposed regulations are less stringent than Subpart D and thus cannot be approved by EPA. Example: R18-13-1003 amendment of 40 CFR 257.73 & 257.74 by deleting "not to exceed a height of 6 inches above the slope of the dike." Requests revision regulations to fully incorporate all requirements of 40 C.F.R. 257.73 and 257.74.

Response: ADEQ has deleted these height restrictions on the recommendation of EPA based on the U.S. District Court's decision in USWAG et al v. EPA (2015) vacating the restrictions. See EPA's discussion at 83 FR 11589, March 15, 2018.

Comment: The definition of "minor modifications" in R18-13-1017(F) is overly broad and includes modifications that are "material," "major," and/or "serve as the underlying basis for a permit condition", denying the public the opportunity to comment on or appeal important CCR permit changes.

Response: ADEQ provided several specific examples in R18-13-1017(F) which will require a minor permit modification. Minor permit modifications are also subject to public scrutiny per R18-13-1018.

Comment: Citizen suits. While ADEQ "backed off" (clarified) earlier statements of avoiding RCRA citizen suits by assuming control of the program, concern remains that A.R.S. citizen enforcement provisions remain very weak. As such, the rule should clarify RCRA citizen enforcement provisions apply to the CCR program.

Response: The citizen suit provisions for RCRA programs come from an act of Congress and are not subject to state removal. Section 7002(a)(1)(B) of RCRA allows any person to sue another person, including a federal, state or local

government agency, whose handling of solid or hazardous waste "may present an imminent or substantial endangerment to health or the environment." ADEQ has neither the ability or intent to change this.

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:

There are no other matters prescribed by statute applicable specifically to ADEQ or this specific rulemaking outside of the authority provided in A.R.S. § 49-891.

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:

This rule requires a permit but it is not technically feasible to issue a general permit because there are only four facilities in Arizona to be permitted. Each facility is unique and will be subject to different permit conditions.

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:

Two federal laws are applicable to the subject of this rule: the WIIN Act (Water Infrastructure Improvements for the Nation Act) enacted by Congress in December 2016, and 40 CFR 257, subpart D, first promulgated in 2015 but amended since. The WIIN Act provided authority for EPA to review and approve permit programs submitted by states for CCR facilities. The approved state programs would then operate in lieu of the federal requirements in 40 CFR 257, subpart D.

In five areas, this rule is more stringent than federal law:

1) Aquifer protection standards already developed under ADEQ statutes and rules for non-CCR wastestreams. See R18-13-1005(B). Authorized in A.R.S. §

49-891(A);

2) CCR surface impoundment safety standards already existing under Arizona Department of Water Resources rules at 15 A.A.C. 12, Article 15. Authorized in A.R.S. § 49-891(B);

3) New ADEQ permitting requirements. These new permitting requirements are contained in R18-13-1010 through R18-13-1021. Authorized in A.R.S. §§ 49-891(C) and (F);

4) Financial assurance requirements contained in R18-13-1020 and Article 17. Authorized in A.R.S. § 49-770(A); and

5) Annual registration fees and permit processing fees contained in R18-13-1021. Authorized in A.R.S. § 49-891(D).

c. Whether a person submitted an analysis to the agency that compares the rule's impact on the competitive ness of businesses in this state as compared to the competitiveness of businesses in other states:

No such analysis was submitted.

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

Incorporated federal citation	Location
40 CFR 257.50, 40 CFR 257.52, 40 CFR 257.53	R18-13-1001
40 CFR 257.60 through 40 CFR 257.64	R18-13-1002
40 CFR 257.70 through 40 CFR 257.74	R18-13-1003
40 CFR 257.80 through 40 CFR 257.84	R18-13-1004
40 CFR 257.90 through 40 CFR 257.98	R18-13-1005
40 CFR 257.100 through 40 CFR 257.104	R18-13-1006
40 CFR 257.105 through 40 CFR 257.107	R18-13-1007
40 CFR 257, Appendices III and IV	R18-13-1008

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

16. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY

SOLID WASTE MANAGEMENT

ARTICLE 10. COAL COMBUSTION RESIDUALS

Section	
R18-13-1001.	Applicability; Incorporation by Reference; General Provisions
R18-13-1002.	Location Restrictions
R18-13-1003.	Design Criteria
R18-13-1003.01.	Additional Design Criteria for New CCR Surface Impoundments and Lateral Expansions of CCR Surface Impoundments
Table 1.	Minimum Factors of Safety for Stability
R18-13-1003.02.	Additional Emergency Action Plan Requirements for CCR Surface Impoundments
R18-13-1004.	Operating Criteria
R18-13-1005.	Groundwater Monitoring and Corrective Action
R18-13-1006.	Closure and Post-Closure Care
R18-13-1007.	Recordkeeping, Notification, and Posting of Information to the Internet
R18-13-1008.	40 CFR 257, Appendices III and IV
R18-13-1010.	Permit Application Requirements for CCR Facilities
R18-13-1010.01.	Additional Application Requirements for Constructing or Modifying CCR Surface Impoundments for Applications Submitted After CCR Program Approval
R18-13-1011.	Permit Contents
R18-13-1012.	Compliance Schedules
R18-13-1013.	CCR Permit Issuance or Denial
R18-13-1014.	CCR Permit Transfer
R18-13-1015.	CCR Permit Termination
R18-13-1016.	CCR Permit Renewals
R18-13-1017.	Modification of a CCR Facility Permit
R18-13-1018.	Public Notice Requirements for CCR Facility Permit Actions
R18-13-1019.	Compliance, ADEQ Inspections, Violations and Enforcement

R18-13-1020. Financial Assurance Requirements
R18-13-1021. Fees
Table 2. Facility Annual Registration Fees
Table 3. CCR Facility Permitting Fees

ARTICLE 17. FINANCIAL ASSURANCE

Section

R18-13-1701. Definitions
R18-13-1703. Financial Demonstrations for CCR Facilities
R18-13-1704. Financial Assurance Mechanisms

R18-13-1001. Applicability; Incorporation by Reference; General Provisions

A. This Article becomes effective as follows:

1. Provisions related to the submission of initial CCR permit applications, including R18-13-1010(A), R18-13-1010(B)(1), R18-13-1010(C), R18-13-1010(D), R18-13-1010(E), R18-13-1010(G), R18-13-1021(B), (D), and (E), and applicable definitions, are effective 60 days after the filing of this rule with the Secretary of State.
2. All other provisions of this Article are effective upon the date of CCR program approval.

B. Any reference or citation to 40 CFR 257, or a section thereof, appearing in the body of this Article includes any modification to the CFR or section made by this Article. When federal regulatory language that has been incorporated by reference into Arizona rule has also been amended, brackets [ ] indicate where the amended language would be placed if it was part of the federal regulation. The subsection labeling for incorporated material in this Article may not conform to the Arizona Secretary of State's formatting requirements, because the formatting reflects the structure of the incorporated federal regulation.

C. 40 CFR 257.50 through 257.53, revised as of December 14, 2020 (and no future editions) are incorporated by reference, modified by the following subsections, and on file with the Arizona Department of Environmental Quality (ADEQ) with the exception of the following:

1. 40 CFR 257.50(e) is not incorporated by reference;
2. 40 CFR 257.51 is not incorporated by reference. 40 CFR 257, subpart D was effective as federal law as provided therein, but is effective as state law, as incorporated in this Article, on the effective date of CCR program approval.

D. 40 CFR 257.53, titled "Definitions", is amended as follows:

1. "New CCR surface impoundment" means:

   [a. In the places listed below, a CCR surface impoundment that begins construction or operation after the effective date of these rules:

      i. R18-13-1002(B), (C), and (D);

      ii. R18-13-1003.01;

      iii. R18-13-1004(B), (C), and (D);

iv. R18-13-1010(D)(11);

v. R18-13-1010.01; and

vi. R18-13-1017(E).

b. Other than as listed in paragraph (a),] a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 19, 2015.

2. "Participating State" means [Arizona, after CCR program approval.]

3. "Participating State Director" means the [Director of ADEQ, after CCR program approval.]

4. "Qualified professional engineer" means an individual who is licensed by [the state of Arizona] as a Professional Engineer to practice one or more disciplines of engineering and who is qualified by education, technical knowledge and experience to make the specific technical certifications required under this [Article. An engineer is considered qualified to provide information to the Director regarding the safe storage level of a reservoir if the engineer:

a. Is licensed in accordance with A.R.S. Title 32, Chapter 1, with proficiency in engineering and knowledge of dam technology,

b. Has three years of experience in the field of dam safety, and

c. Has actual experience in conducting dam safety inspections.]

5. "State" means [Arizona.]

E. In addition to the definitions in 40 CFR 257.53:

1. "ADEQ" or "Department" means the Arizona Department of Environmental Quality.

2. "Applicable requirement" means a requirement in A.R.S. Title 49, Chapter 4, this Article, or Article 17, to which an owner or operator is subject based on the applicability criteria in these laws.

3. "CCR multi-unit" means a group of CCR units operating with a multiunit

groundwater monitoring system complying with 40 CFR 257.91(d).

4. "CCR program approval" means United States Environmental Protection Agency approval of the Arizona coal combustion residuals program in accordance with 42 United States Code section 6945(d)(1).

5. "Certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority" means "certification from a qualified professional engineer, approved by the Director or EPA where EPA is the permitting authority", unless specifically provided otherwise.

6. "Director" or "State Director" means [the director of ADEQ.]

7. "Discharge" has the same meaning prescribed in A.R.S. § 49-201.

8. "EPA" means the United States Environmental Protection Agency.

F. The following definitions are also applicable in this Article:

1. "Appurtenant structure" means any structure that is contiguous and essential to the safe operation of the CCR surface impoundment including embankments, saddle dikes, outlet works and controls, diversion ditches, spillway and controls, access structures, bridges, and related housing at a surface impoundment.

2. "Emergency spillway" means a spillway designed to safely pass the inflow design flood routed through the reservoir. If the flow is controlled by gates, it is a controlled spillway. If the flow is not controlled by gates, it is an uncontrolled spillway.

3. "Incremental adverse consequences" means under the same loading conditions, the additional adverse consequences such as economic, intangible, lifeline, or human losses, that would occur due to the failure or improper operation of the CCR surface impoundment over those that would have occurred without failure or improper operation of the CCR surface impoundment.

4. "Intangible losses" means incremental adverse consequences to property that are not economic in nature, including property related to social, cultural, unique, or resource-based values, including the loss of irreplaceable and unique historic and cultural features; long-lasting pollution of land or water; or long-lasting or permanent changes to the ecology, including fish and endangered species habitat

identified and evaluated by a public natural resource management or protection agency.

5. "Maximum credible earthquake" means the most severe earthquake that is believed to be possible at a point on the basis of geologic and seismological evidence.

6. "Maximum water surface" means the maximum elevation of the reservoir water level attained during routing of the inflow design flood.

7. "Outlet works" means a closed conduit under or through a CCR surface impoundment or through an abutment for the controlled discharge of the contents normally impounded by a CCR surface impoundment and reservoir. The outlet works include the inlet and outlet structures appurtenant to the conduit. Outlet works may be controlled or uncontrolled.

8. "Probable maximum flood" or "PMF" means the flood runoff expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the [region, including rain and snow where applicable. 0.5 PMF is that flood represented by the flood hydrograph with ordinates equal to 0.5 the corresponding ordinates of the PMF hydrograph.]

9. "Probable maximum precipitation" means the greatest depth of precipitation for a given duration that is theoretically physically possible over a particular size storm area at a particular geographical location at a particular time of year.

10. "Reservoir" means a CCR surface impoundment.

11. "Residual freeboard" or "freeboard" means the vertical distance between the highest water surface elevation during the inflow design flood and the lowest point at the top of the CCR surface impoundment.

12. "Safe storage level" means the maximum reservoir surface elevation at which the Director determines it is safe to impound water, other liquids, or CCR in the reservoir.

13. "Safety deficiency" means a condition at a CCR surface impoundment that impairs or adversely affects the safe operation of the CCR surface impoundment.

14. "Spillway crest" means the highest elevation of the floor of the spillway along a centerline profile through the spillway.

15. "Storage capacity" means the maximum volume of CCR, liquid, sediment, or debris that can be impounded in the reservoir with no discharge, including the situation where an uncontrolled outlet becomes plugged. When spillways are present, the storage capacity is reached when the reservoir level is at the crest of the emergency spillway, or at the top of permanently mounted emergency spillway gates in the closed position. Storage capacity excludes dead storage below the natural ground surface.

16. "Total freeboard" means the vertical distance between the emergency spillway crest or the safe storage level and the top of the CCR surface impoundment.

17. "Unsafe" means that safety deficiencies in a CCR surface impoundment or spillway could result in failure of the CCR surface impoundment with subsequent loss of human life or significant property damage.

R18-13-1002. Location Restrictions

A. 40 CFR 257.60 through 40 CFR 257.64, revised as of December 14, 2020 (and no future editions) are incorporated by reference, modified by the following subsections, and on file with ADEQ.

B. In addition to the location requirements in 40 CFR 257.62(a), new CCR surface impoundments and all lateral expansions of CCR surface impoundments shall not be located within 60 meters (200 feet) of the outermost damage zone of a fault that has had displacement in either Holocene or Late Pleistocene time unless the owner or operator demonstrates by the date specified in § 257.62(c)(2) that an alternative setback distance of less than 60 meters (200 feet) will prevent damage to the structural integrity of the CCR impoundment.

C. In addition to the requirements in 40 CFR 257.63(a), the following requirements are added:

1. For a new or lateral expansion of a CCR surface impoundment, the owner or operator shall submit a review of the seismic or earthquake history of the area around the surface impoundment within a radius of 100 miles to establish the relationship of the site to known faults and epicenters. The review shall include any known earthquakes and the epicenter locations and magnitudes of the

earthquakes.

2. For a new or lateral expansion of a CCR surface impoundment, the owner or operator shall identify the location of active or potentially active faults that have experienced Holocene or Late Pleistocene displacement within a radius of 100 miles of the site.

3. For a new or lateral expansion of a high or significant hazard potential CCR surface impoundment, the owner or operator shall design the impoundment to withstand the maximum credible earthquake or the maximum horizontal acceleration, whichever is greater.

D. In addition to the requirements in 40 CFR 257.64, the owner or operator shall not construct a new CCR surface impoundment or a CCR surface impoundment lateral expansion on active faults, as defined by § 257.62(a), collapsible soils, dispersive soils, sinkholes, fissures, or soils with the potential for subsidence, unless the owner or operator demonstrates that the CCR surface impoundment can safely withstand the anticipated offset or other unsafe effects on the CCR surface impoundment.

E. Subsections (B), (C), and (D) of this Section are based on Arizona dam safety standards in existence on July 12, 2024, are additional to those in 40 CFR 257, subpart D, as incorporated in this Article, and do not apply to:

1. CCR surface impoundments with a maximum height of less than 6 feet, regardless of storage capacity;

2. CCR surface impoundments with a maximum height of between 6 and 25 feet and a storage capacity of less than 50 acre-feet; or

3. CCR surface impoundments with a maximum height greater than 25 feet and a storage capacity of 15 acre-feet or less.

R18-13-1003. Design Criteria

A. 40 CFR 257.70 through 40 CFR 257.74, revised as of December 14, 2020 (and no future editions) are incorporated by reference, modified by the following subsections, and on file with ADEQ.

B. 40 CFR 257.73(a)(4) is amended by deleting "not to exceed a height of 6 inches above the slope of the dike,".

C. 40 CFR 257.73(d)(1)(iv) is amended by deleting "not to exceed a height of 6 inches above the slope of the dike,".

D. 40 CFR 257.74(a)(4) is amended by deleting "not to exceed a height of 6 inches above the slope of the dike,".

E. 40 CFR 257.74(d)(1)(iv) is amended by deleting "not to exceed a height of 6 inches above the slope of the dike,".

F. 40 CFR 257.74(d)(1)(v)(B) is amended as follows: "(B) The combined capacity of all spillways must adequately manage flow during and following the peak discharge from a:

(1) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

(2) 1000-year flood [or 0.5 PMF, whichever is greater] for a significant hazard potential CCR surface impoundment; or

(3) 100-year flood [or 0.25 PMF, whichever is greater] for a low hazard potential CCR surface impoundment."

G. Subsection (F) of this Section is based on Arizona dam safety standards in existence on July 12, 2024, is additional to those in 40 CFR 257, subpart D, as incorporated in this Article, and does not apply to:

1. CCR surface impoundments with a maximum height of less than 6 feet, regardless of storage capacity;
2. CCR surface impoundments with a maximum height of between 6 and 25 feet and a storage capacity of less than 50 acre-feet; or
3. CCR surface impoundments with a maximum height greater than 25 feet and a storage capacity of 15 acre-feet or less.

R18-13-1003.01. Additional Arizona Design Criteria for New CCR Surface Impoundments and Lateral Expansions of CCR Surface Impoundments

A. The requirements in this Section are additional to those in 40 CFR 257, subpart D, as incorporated in this Article, and do not replace any requirement of 40 CFR 257, subpart D, as incorporated herein.

B. Geotechnical Requirements. The owner or operator shall provide an evaluation of the static stability of the foundation, CCR surface impoundment, and slopes of the reservoir

rim.

C. CCR surface impoundment Embankment Requirements.

1. Geotechnical Requirements. Table 1 states additional minimum factors of safety for embankment stability under various loading conditions not covered by 40 CFR 257.74(e).

   a. The analysis of minimum factors of safety shall include the effects of anisotropy on the phreatic surface position by using a ratio of horizontal permeability to vertical permeability of at least 10. The Director may require ratios of up to 100 if the material types and construction techniques will cause excessive stratification.

   b. The owner or operator shall use tests modeling the conditions being analyzed to determine the strengths used in the stability analysis. The stability analysis shall include total and effective stress strengths appropriate for the different material zones and conditions analyzed. The stability analysis shall use undrained strengths or strength parameters for all saturated materials.

   c. If applicable, the owner or operator shall perform an analysis of the upstream slope stability for a partial pool with steady seepage considering the reservoir level that provides the lowest factor of safety.

2. Seismic Requirements

   a. The owner or operator shall determine the seismic characteristics of the site as prescribed in R18-13-1002(B) and(C) and R18-13-1010.01(G)(3)(m).

   b. The owner or operator shall determine the liquefaction susceptibility of the embankment, foundation, and abutments and may use standard penetration testing, cone penetration testing, shear wave velocity measurements, or a combination of these methods to make this determination. The owner or operator shall compute the minimum factor of safety against liquefaction at specific points and make a determination of whether the overall site is subject to liquefaction.

   c. The owner or operator shall compute a minimum factor of safety against

overtopping due to deformation and settlement in each of the following cases. The minimum factor of safety against overtopping can be no less than 2.5, determined by dividing the total pre-earthquake freeboard by the estimated vertical settlement in feet. The owner or operator shall determine the total vertical settlement by adding the settlement values of the upstream and downstream slopes.

i. An embankment, foundation, or abutment is not subject to liquefaction, has a maximum peak acceleration of more than 0.2g or a maximum peak acceleration of more than 0.35g and consists of clay on a clay or bedrock foundation; or

ii. The embankment, foundation or abutment is subject to liquefaction.

d. The owner or operator shall perform a liquefaction analysis to establish approximate boundaries of liquefiable zones and physical characteristics of the soil following liquefaction for an embankment, foundation, or abutment subject to liquefaction. The owner or operator shall perform an analysis of the potential for flow liquefaction.

e. Other analytical procedures may be required by the Director for sites with high seismicity or low strength embankment or foundation soils.

3. Miscellaneous Design Requirements

a. The design of any significant or high hazard potential CCR surface impoundment shall provide seepage collection and prevent internal erosion or piping due to embankment cracking or other causes.

b. The Director shall review the filter and permeability design for a chimney drain, drain blanket, toe drain, or outlet conduit filter diaphragms on the basis of unique site characteristics.

i. The minimum thickness of an internal drain is 3 feet.

ii. The minimum width of a chimney drain is 6 feet.

iii. The owner or operator shall filter match an internal drain to its adjacent material.

iv. The owner or operator shall design internal drains with sufficient

capacity for the expected drainage without the use of drainpipes using only natural granular materials.

c. The use of a geosynthetic is not permitted in a design if it serves as the sole defense against CCR surface impoundment embankment failure. The use of geotextiles and geonets as a filter or drain material or a geomembrane liner is permitted only in a location that is easily accessible for repair or if its excavation cannot create an unsafe condition at the CCR surface impoundment. The Director may impose permit conditions, including monitoring appropriate to the hazard classification, inspection, and necessary repairs.

d. The owner or operator shall use armoring on any upstream slope of a CCR surface impoundment embankment. If the owner or operator uses rock riprap for armoring, it shall be well-graded, durable, sized to withstand wave action, and placed on a well-graded pervious sand and gravel bedding or geotextile with filtering capacity appropriate for the site.

e. The minimum width of the top of a CCR surface impoundment embankment is equal to the structural height of the CCR surface impoundment divided by 5 plus an additional 5 feet. The required minimum width for any CCR surface impoundment embankment is 12 feet. The maximum width for any CCR surface impoundment embankment is 25 feet.

Table 1. Minimum Factors of Safety for Stability

(Not applicable to an embankment on a clay shale foundation)

Embankment Loading Condition	**Minimum Factor of Safety**
End of construction case for embankments greater than 50 feet in height on weak foundations	1.4
Steady state seepage - upstream (critical partial pool)	1.5

Instantaneous drawdown - upstream slope	1.2

D. The requirements in this Section are based on Arizona dam safety standards additional to those in 40 CFR 257, subpart D, as incorporated in this Article, and do not apply to:

1. CCR surface impoundments with a maximum height of less than 6 feet, regardless of storage capacity;
2. CCR surface impoundments with a maximum height of between 6 and 25 feet and a storage capacity of less than 50 acre-feet; or
3. CCR surface impoundments with a maximum height greater than 25 feet and a storage capacity of 15 acre-feet or less.

R18-13-1003.02. Additional Emergency Action Plan Requirements for CCR Surface Impoundments

A. In addition to the emergency action plan (EAP) requirements in 40 CFR 257.73(a)(3) and 257.74(a)(3), the EAP shall:

1. Contain a notification chart showing the priority for notification in an emergency situation. The owner shall notify local emergency response agencies, affected downstream populations, county emergency management agencies, and affected flood control districts;
2. Contain a delineation of potentially unsafe conditions, evaluation procedures, and triggering events that require the initiation of partial or full emergency notification procedures, based on the urgency of the situation; including the following:
    a. Sliding of upstream or downstream slopes or abutments contiguous to the CCR surface impoundment;
    b. Sudden subsidence of the top of the CCR surface impoundment;
    c. Longitudinal or transverse cracking of the top of the CCR surface impoundment;
    d. Unusual release of water from the downstream slope or face of the CCR surface impoundment;
    e. Other unusual conditions at the downstream slope of the CCR surface impoundment;

f. Significant landslides in the reservoir area;

g. Increasing volume of seepage;

h. Cloudy seepage or recent deposits of soil at seepage exit points;

i. Sudden cracking or displacement of concrete in a concrete or masonry CCR surface impoundment spillway or outlet works;

j. Loss of freeboard or CCR surface impoundment cross section due to storm wave erosion;

k. Flood waters overtopping an embankment CCR surface impoundment; or

l. Spillway backcutting that threatens evacuation of the reservoir.

3. Contain a specific notification procedure for each emergency situation anticipated;

4. Contain a description of emergency supplies and resources, equipment access to the site, and alternative means of communication.

5. Require the owner to submit a copy of the proposed emergency action plan for review by the Arizona Division of Emergency Management and all local emergency coordinators involved in the plan. The owner shall incorporate appropriate recommendations generated by the reviews and submit the revised emergency action plan to the Department.

6. Be reviewed and updated, at a minimum, every year to ensure the information is accurate and to incorporate changes such as new personnel, changing roles of emergency agencies, emergency response resources, conditions of the surface impoundment and information learned from mock exercises. The owner shall send updated portions of the plan to persons and agencies holding copies of the plan within 15 days after preparation of an update. The updated plan shall be placed in the facility's operating record as required by § 257.105(f)(6).

7. Notwithstanding paragraph (6) above, the owner or operator of a CCR surface impoundment may amend the written EAP at any time provided the revised plan is placed in the facility's operating record as required by § 257.105(f)(6). The owner or operator must amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

8. Be certified by a qualified professional engineer stating that the written EAP, and

any subsequent amendment of the EAP, meets the requirements of this Article.

B. In addition to the emergency action plan requirements in §§ 257.73(a)(3) and 257.74(a)(3), as incorporated:

1. The owner or operator shall increase the frequency of observation when the reservoir is full, during heavy rains or flooding, and following an earthquake.
2. The owner or operator is responsible for the safety of the CCR surface impoundment and shall take action to lower any liquid portion of the reservoir if it appears that the impoundment has weakened or is in danger of failing.
3. The owner or operator of a CCR surface impoundment shall immediately notify the Department and responsible authorities in adjacent and downstream communities, including emergency management authorities, of a condition that may threaten the safety of the impoundment. The owner shall take necessary actions to protect human life and property, including action required under an emergency action plan or order issued under this Article. The owner shall report these actions to the Director as soon as possible, but not later than 12 hours after discovery of the conditions.
4. If CCR surface impoundment failure appears imminent, the owner or operator shall notify the county sheriff, and the Arizona Department of Public Safety or other emergency official immediately.
5. The owner or operator shall notify the Director immediately of any emergency condition that exists and any emergency action taken.
6. Emergency actions not impairing the safety of the CCR surface impoundment may be taken before guidance can be provided by an engineer and do not require prior approval of the Director. Emergency actions do not excuse an owner's responsibility to promptly undertake a permanent solution. Emergency actions include:
    a. Stockpiling materials such as riprap, earth fill, sand, sandbags, and plastic sheeting.
    b. Lowering the reservoir level by making releases through the outlet or a gated spillway, by pumping, or by siphoning.
    c. Armoring eroded areas by placing sandbags, riprap, plastic sheeting, or

other available material.

d. Plugging leakage entrances on the upstream slope.

e. Increasing freeboard by placing sandbags or temporary earth fill on the CCR surface impoundment.

f. Diverting flood waters to prevent them from entering the reservoir basin.

g. Constructing training berms to control flood waters.

h. Placing sandbag ring dikes or reverse filter materials around boils at the downstream toe to provide back pressure.

i. Removing obstructions from outlet or spillway flow areas.

7. Emergency actions impairing the safety of the CCR surface impoundment require prior approval of the Director. An owner shall not lower the water level by excavating the spillway or embankment unless failure is imminent.

8. The Director shall issue an emergency approval to repair, alter, or remove an existing CCR surface impoundment if the Director finds that immediate remedial action is necessary to alleviate an imminent threat to human life or property.

a. The emergency approval shall be provided in writing.

b. The emergency approval may contain conditions the Director determines are appropriate to protect human life or property.

c. The emergency approval is effective immediately for 30 days after notice is issued unless extended in writing by the Director. The Director shall also send notice to the county flood control district of the county in which the CCR surface impoundment is located, all municipalities within five miles downstream of the CCR surface impoundment, and any additional persons identified in the emergency action plan.

d. The Director may institute legal or administrative proceedings that the Director deems appropriate for violations of the emergency approval or conditions of the emergency approval.

e. After the Director issues an emergency approval, the Department shall post information related to the approval on the Department's CCR website as soon as practicable.

C. The requirements in this Section are based on Arizona dam safety standards additional to

those in 40 CFR 257, subpart D, as incorporated in this Article, and do not apply to:

1. CCR surface impoundments with a maximum height of less than 6 feet, regardless of storage capacity;
2. CCR surface impoundments with a maximum height of between 6 and 25 feet and a storage capacity of less than 50 acre-feet; or
3. CCR surface impoundments with a maximum height greater than 25 feet and a storage capacity of 15 acre-feet or less.

R18-13-1004. Operating Criteria

A. 40 CFR 257.80 through 40 CFR 257.84, revised as of December 14, 2020 (and no future editions) are incorporated by reference, modified by the following subsections, and on file with ADEQ:

B. 40 CFR 257.82(a)(3) is amended as follows: "(3) The inflow design flood is:

(i) For a high hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the probable maximum flood;

(ii) For a significant hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the 1,000-year flood [or, for new impoundments and lateral expansions, 0.5 PMF, whichever is greater];

(iii) For a low hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the 100-year flood [or, for new impoundments and lateral expansions, 0.25 PMF, whichever is greater]; or

(iv) For an incised CCR surface impoundment, the 25-year flood."

C. In addition to the requirements in 40 CFR 257.82(a), the following requirements are added:

1. Inflow Design Flood Requirements. For new impoundments and lateral expansions, an owner or operator shall ensure that the total freeboard is the largest of the following:

a. The sum of the inflow design flood maximum water depth above the spillway crest plus wave run up.

b. The sum of the inflow design flood maximum water depth above the

spillway crest plus 3 feet.

c. A minimum of 5 feet.

2. Surface Impoundment Site and Reservoir Area Requirements

a. An owner or operator shall demonstrate that reservoir storage during the inflow design flood will not result in incremental adverse consequences during the inflow design flood. In determining whether a discharge will result in incremental adverse consequences, the Director shall evaluate whether the owner or operator has taken any or all of the following actions: issuing public notice to upstream affected property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flood easements or other acquisitions of real property, or other actions appropriate to safeguard the CCR surface impoundment site and reservoir.

b. The owner or operator shall clear the reservoir storage area of debris.

c. The owner or operator shall place borrow areas a safe distance from the upstream toe and the downstream toe of the CCR surface impoundment to prevent a piping failure of the CCR surface impoundment.

d. The owner or operator shall keep the top of the CCR surface impoundment and appurtenant structures accessible by equipment and vehicles for emergency operations and maintenance.

D. In addition to the requirements in 40 CFR 257.82(b), the following requirement are added:

1. Emergency Spillway Requirements. An owner or operator of a new CCR surface impoundment with emergency spillways or a lateral expansion of a CCR surface impoundment with emergency spillways shall:

a. Construct each spillway in a manner that avoids flooding in excess of the flooding that would have occurred in the same location under the same conditions before construction. The owner or operator of a CCR surface impoundment shall demonstrate that a spillway discharge would not result in incremental adverse consequences. In determining whether a spillway discharge of a CCR surface impoundment would result in incremental

adverse consequences, the Director shall evaluate whether the owner or operator has taken any or all of the following actions: issuing public notice to downstream property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flow easements or other acquisitions of real property, or other actions appropriate to safeguard the CCR surface impoundment site and flood channel.

b. Include a control structure to avoid head cutting and lowering of the spillway crest for spillways excavated in soils or soft rock. In the alternative, the design may provide evidence acceptable to the Director that erosion during the inflow design flood will not result in a sudden release of the reservoir.

c. Provide each spillway and channel with a minimum width of 10 feet and suitable armor to prevent erosion during the discharge resulting from the inflow design flood.

d. Ensure that downstream spillway channel flows do not encroach on the CCR surface impoundment unless suitable erosion protection is constructed.

e. Not construct bridges or fences across a spillway unless the construction is approved as part of the CCR facility permit. The CCR facility permit may include conditions regarding the design and operation of the spillway and fencing, based on safety concerns.

f. Not use a pipe or culvert as an emergency spillway unless specifically approved in the CCR facility permit following review of the CCR surface impoundment design and site characteristics.

2. Outlet Works Requirements. An owner or operator shall ensure that a CCR surface impoundment that has outlet works has a low-level outlet works that:

a. Is capable of draining the reservoir to the sediment pool level or CCR surface. A low-level outlet works for a high or significant hazard potential CCR surface impoundment shall be a minimum of 36 inches in diameter. A low-level outlet works for a low hazard potential CCR surface

impoundment shall be a minimum of 18 inches in diameter.

b. Has a filter diaphragm or other current practice measures to reduce the potential for piping along the conduit.

c. Has accessible outlet controls when the spillway is in use.

d. Has an emergency manual override system or can be operated manually.

e. Is constructed of materials appropriate for loading condition, seismic forces, thermal expansion, cavitation, corrosion, and potential abrasion. The owner or operator shall not use corrugated metal pipes or other thin-walled pipes except as a form for a cast-in-place concrete conduit. The owner or operator shall construct outlet conduits of cast-in-place reinforced concrete. The owner or operator shall design each outlet to maintain water tightness. The owner or operator shall construct each outlet to prevent the occurrence of piping adjacent to the outlet.

f. Has an operating or guard gate on the upstream end of any gated outlet.

g. Has an outlet conduit near the base of one of the abutments on native bedrock or other competent material. The entire length of the conduit shall be supported on foundation materials of uniform density and consistency to prevent adverse differential settlement.

h. Has an upstream valve or gate capable of controlling the discharge through all ranges of flow on any gated outlet conduit.

i. Has a trashrack designed for a minimum of 25% of the reservoir head to which it would be subjected if completely clogged at the upstream end of the outlet.

j. Has an outlet conduit designed for internal pressure equal to the full reservoir head and for superimposed embankment loads, acting separately.

E. 40 CFR 257.83(a)(1)(i) is amended to read: "At intervals not exceeding seven days, inspect for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit. [The owner or operator shall increase the frequency of observation when the reservoir is full, during heavy rains or flooding, and following an earthquake.]"

F. 40 CFR 257.83, titled "Inspection requirements for CCR surface impoundments",

subsection (b)(1) is amended to read: "If the existing or new CCR surface impoundment or any lateral expansion of the CCR surface impoundment is subject to the periodic structural stability assessment requirements under § 257.73(d) or § 257.74(d), the CCR unit must additionally be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards. [The owner or operator shall notify the Director and submit a written summary of the engineer's qualifications at least 14 days before the scheduled inspection.] The inspection must, at a minimum, include:"

G. In addition to the inspection requirements for CCR surface impoundments in 40 CFR 257.83(b)(1), the following requirements are added:

1. Inspection of any permanent monument or monitoring installations;
2. Assessment of all parts of the CCR surface impoundment that are related to the CCR surface impoundment's safety; and
3. A recommendation regarding the safe storage level of the impoundment.

H. In addition to the inspection requirements for CCR surface impoundments in 40 CFR 257.83(b)(5), the owner or operator shall notify the Department within 24 hours and in writing within five days if a deficiency or release could result in harm to human health or the environment or has resulted in a release. The owner or operator shall notify the Department in writing within 14 days of all other deficiencies under 40 CFR 257.83(b)(5).

I. In addition to the inspection requirements for CCR surface impoundments in 40 CFR 257.83, the following requirements are added:

1. Notwithstanding 40 CFR 257.73(a)(2)(i) and (ii) and 40 CFR 257.74(a)(2)(i) and (ii), a qualified professional engineer shall review the hazard potential classification of each CCR surface impoundment during each subsequent inspection under § 257.83(b)(4)(i) and revise the classification in accordance with current conditions.]
2. Maintenance and Repair
   a. An owner shall perform general maintenance and ordinary repairs that do not impair the safety of the CCR surface impoundment. General

maintenance and ordinary repair activities listed under this subsection do not require prior approval of the Director. These repair activities include:

i. Removing brush or tall weeds.

ii. Cutting trees and removing slash from the embankment or spillway. Small stumps may be removed provided no excavation into the embankment occurs.

iii. Exterminating rodents by trapping or other methods. Rodent damage may be repaired provided it does not involve excavation that extends more than 2 feet into the embankment and replacement materials are compacted as they are placed.

iv. Repairing erosion gullies less than 2 feet deep on the embankment or in the spillway.

v. Grading the surface on the top of the CCR surface impoundment embankment or spillway to eliminate potholes and provide proper drainage, provided the freeboard is not reduced.

vi. Placing additional riprap and bedding on the upstream slope, or in the spillway in areas that have sustained minor damage and restoring the original riprap protection where the damage has not yet resulted in erosion and weakening of the CCR surface impoundment.

vii. Painting, caulking, or lubricating metal structures.

viii. Patching or caulking spalled or cracked concrete to prevent deterioration.

ix. Removing debris, rock, or earth from outlet conduits or spillway channels and basins.

x. Patching to prevent deterioration within outlet works.

xi. Replacing worn or damaged parts on outlet valves or controls to restore them to original condition or its equivalent.

xii. Repairing or replacing fences intended to keep traffic or livestock off the CCR surface impoundment or spillway.

b. General maintenance and ordinary repair that may impair or adversely

affect safety, such as excavation into or near the toe of the CCR surface impoundment, construction of new appurtenant structures for the CCR surface impoundment, and repair of damage that has already significantly weakened the CCR surface impoundment shall be performed in accordance with this Article. The Director shall determine pursuant to R18-13-1017 whether general maintenance and ordinary repair activities not listed in paragraph (a) will impair safety.]

J. Subsections (B) through (I) of this Section are based on Arizona dam safety standards additional to those in 40 CFR 257, subpart D, as incorporated in this Article, and do not apply to:

1. CCR surface impoundments with a maximum height of less than 6 feet, regardless of storage capacity;
2. CCR surface impoundments with a maximum height of between 6 and 25 feet and a storage capacity of less than 50 acre-feet; or
3. CCR surface impoundments with a maximum height greater than 25 feet and a storage capacity of 15 acre-feet or less.

R18-13-1005. Groundwater Monitoring and Corrective Action

A. 40 CFR 257.90 through 40 CFR 257.98, revised as of December 14, 2020 (and no future editions) are incorporated by reference, modified by the following subsections, and on file with ADEQ, with the exception of 40 CFR 257.90(g), "Suspension of groundwater monitoring requirements".

B. 40 CFR 257.94(a) is amended as follows: "(a) The owner or operator of a CCR unit must conduct detection monitoring at all groundwater monitoring wells consistent with this section. At a minimum, a detection monitoring program must include groundwater monitoring for all constituents listed in appendix III to this part. [The Director may require monitoring for constituents or pollutants not listed in appendix III based on information that non-CCR waste has been placed in a CCR unit. The owner or operator may propose to the Director that monitoring for non-CCR constituents be based on the facility's most recent aquifer protection permit. Requirements for non-CCR constituents at existing and new CCR units, including alert levels, discharge limitations, compliance

schedules, corrective actions and temporary cessation or plans shall be no more stringent than required to satisfy the requirements of A.R.S. Title 49, Chapter 2, Article 3, and 18 A.A.C. 9, Articles 1 and 2.]"

C. 40 CFR 257.94(e)(2) is amended as follows: "(2) The owner or operator may demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. [An owner or operator that is investigating whether to submit an alternative source demonstration under this section, shall notify the Director in writing within seven days of that decision.] The owner or operator shall complete the written demonstration within 90 days of [determining that there is] a statistically significant increase over background levels to include obtaining a certification from a qualified professional engineer verifying the accuracy of the information in the report, [and submit the demonstration and certification to the Director for approval.] If the owner or operator completes a successful demonstration, as supported by a certification from a qualified professional engineer, within the 90-day period, the owner or operator may continue with a detection monitoring program, [unless such demonstration is subsequently disapproved by the Director.] If a successful demonstration was not completed within the 90-day period [or if the Director disapproves the demonstration,] the owner or operator shall initiate an assessment monitoring program as required under § 257.95. The owner or operator also shall include the demonstration in the annual groundwater monitoring and corrective action report required by § 257.90(e), in addition to the certification by a qualified professional engineer [and Director approval.]"

D. 40 CFR 257.95(g)(3)(ii) is modified as follows: "(ii) Demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. [An owner or operator that is investigating whether to submit an alternative source demonstration under this section, shall notify the Director in writing within seven days of that decision.] Any such demonstration shall be supported by a report that includes the factual or evidentiary basis for any conclusions, and shall be certified to be accurate by a qualified professional engineer. [The demonstration, report

and certification shall be submitted to the Director for approval.] If a successful demonstration is made, the owner or operator shall continue monitoring in accordance with the assessment monitoring program pursuant to this section, and may return to detection monitoring if the constituents in Appendix III and Appendix IV of this part are at or below background as specified in paragraph (e) of this section, [unless such demonstration is subsequently disapproved by the Director.] The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by § 257.90(e), in addition to the certification by a qualified professional engineer [and Director approval.]

E. 40 CFR 257.95(g)(4) is modified as follows: "(4) If a successful demonstration has not been made at the end of the 90-day period provided by paragraph (g)(3)(ii) of this section, [or if the Director disapproves the demonstration,] the owner or operator of the CCR unit shall initiate the assessment of corrective measures requirements under § 257.96."

F. 40 CFR 257.95(h) is amended as follows:

"(h) The owner or operator of the CCR unit shall establish a groundwater protection standard for each constituent in appendix IV to this part [and each pollutant identified pursuant to subsection (B)] detected in the groundwater. The groundwater protection standard shall be:

(1) For constituents [for which an Aquifer Water Quality Standard has been established under 18 A.A.C. 11, Article 4, either the Aquifer Water Quality Standard for that constituent, or the maximum contaminant level (MCL) that has been established under §§ 141.62 and 141.66 of this title, whichever is more stringent. For constituents for which no Aquifer Water Quality Standard exists, and] for which a maximum contaminant level (MCL) has been established under §§ 141.62 and 141.66 of this title, the MCL for that constituent.

(2) [For constituents for which no Aquifer Water Quality Standard exists, and for which a maximum contaminant level (MCL) has not been established under 40 CFR 141.62 and 141.66, the background concentration established from wells in accordance with § 257.91.]

(3) For constituents for which the background level is higher than the levels

identified under [paragraph (h)(1)] of this section, the background concentration."

G. 40 CFR 257.97, titled "Selection of remedy", paragraph (a) is amended as follows: "(a) Based on the results of the corrective measures assessment conducted under § 257.96, the owner or operator must, as soon as feasible, select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. This requirement applies in addition to, not in place of, any applicable standards under the Occupational Safety and Health Act. The owner or operator must prepare a semiannual report describing the progress in selecting and designing the remedy. Upon selection of a remedy, the owner or operator must prepare a final report describing the selected remedy and how it meets the standards specified in paragraph (b) of this section. The owner or operator shall obtain a certification, from a qualified professional engineer, [which shall be submitted to the Director for approval,] that the remedy selected meets the requirements of this section. The report has been completed when it is placed in the operating record as required by § 257.105(h)(12). [The remedy selected shall be incorporated into the initial CCR facility permit, or added to it as a major permit modification.]"

H. 40 CFR 257.98, titled "Implementation of the corrective action program" paragraph (e) is amended as follows: "(e) Upon completion of the remedy, the owner or operator must prepare a notification stating that the remedy has been completed. The owner or operator must obtain a certification, from a qualified professional engineer, [which shall be submitted to the Director for approval,] attesting that the remedy has been completed in compliance with the requirements of paragraph (c) of this section. The [notification] has been completed when it is placed in the operating record as required by § 257.105(h)(13)."

R18-13-1006. Closure and Post-Closure Care

40 CFR 257.100 through 40 CFR 257.104, revised as of December 14, 2020 (and no future editions) are incorporated by reference, on file with ADEQ, and modified by adding paragraph (4) to 40 CFR 257.104(b) as follows: "Inspection and monitoring, as required by § 257.83(b), as amended, shall continue throughout the post-closure care period."

R18-13-1007. Recordkeeping, Notification, and Posting of Information to the Internet

A. 40 CFR 257.105 through 40 CFR 257.107, revised as of December 14, 2020 (and no future editions) are incorporated by reference, modified by the following subsections, and on file with ADEQ.

B. 40 CFR 257.105(f)(6) is amended as follows: "(6) The emergency action plan (EAP), and any amendment of the EAP, as required by §§ 257.73(a)(3), 257.74(a)(3), [and R18-13-1003.02,] except that only the most recent EAP must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this section."

C. 40 CFR 257.105(h)(1) is amended as follows: "(1) [All] annual groundwater monitoring and corrective action [reports,] as required by § 257.90(e) [, throughout the active life of the unit and post-closure care period.]"

D. 40 CFR 257.105 is amended by adding paragraph (k) as follows: "By March 15 of each calendar year, the owner or operator of a CCR facility shall determine and place in the operating record the amount of CCR beneficially used in the previous calendar year. The amount shall be measured based on when the product leaves the facility site."

E. 40 CFR 257.105 is amended by adding paragraph (l) as follows: "The financial assurance cost estimate and financial assurance mechanisms used to satisfy R18-13-1020."

F. 40 CFR 257.106 is amended by adding paragraph (k) as follows: "The owner or operator of a CCR unit subject to this subpart shall notify the Director when information has been placed in the operating record under § 257.105(k)."

G. 40 CFR 257.107 is amended by adding paragraph (k): "(k) CCR Facility Permit. The owner or operator of a CCR unit subject to this subpart must place the entire CCR facility permit on the facility's CCR website. The placement of the initial permit shall be updated with each modification within 30 days of the Director's approval of the modification."

R18-13-1008. 40 CFR 257, Appendices III and IV

40 CFR 257, Appendices III and IV, revised as of December 14, 2020 (and no future editions) are incorporated by reference and on file with ADEQ.

R18-13-1010. Permit Application Requirements for CCR Facilities

A. The owner or operator of a CCR unit that meets the applicability requirements in 40 CFR

257.50 shall submit to the Director a complete application for an initial or a renewal CCR facility permit, any new CCR unit, or any lateral expansion to a CCR unit, on an application form, as described in this Section.

B. The time for application submittal shall be as follows:

1. An application for an initial CCR facility permit shall be submitted within 180 days after the effective date of CCR program approval. An application for an initial CCR facility permit may be submitted prior to CCR program approval as allowed under A.R.S. § 49-891(F).
2. An application for a new CCR unit or lateral expansion of a CCR unit shall be submitted before beginning construction. Construction may not begin until the Director issues approval through a permit or modification authorizing construction, unless:
   a. For a CCR surface impoundment before a CCR facility permit has been issued for that facility, the owner or operator has obtained approval to construct from ADWR and demonstrates to the satisfaction of the Director that commencing construction before approval is necessary to comply with 40 CFR 257, as incorporated in this Article;
   b. For a CCR unit other than a CCR surface impoundment before a CCR facility permit has been issued for that facility, the owner or operator demonstrates to the satisfaction of the Director that commencing construction before approval is necessary to comply with 40 CFR 257, as incorporated in this Article.
3. For a renewal permit as required under R18-13-1016(A).

C. The owner or operator shall hold a public meeting in order to solicit questions from the community and inform the community about its intended permit at one of the times listed below. The owner or operator shall notify ADEQ at least 30 days before the meeting and provide adequate public notice for the meeting:

1. Within 90 days after receiving notice from the Director that its application is administratively complete, or
2. Prior to submitting an initial or renewal CCR facility permit application.

D. An owner or operator applying for a CCR facility permit shall provide the Department

with the following information in the application and shall clearly identify any confidential business information that if made public, would divulge the trade secrets of the person as defined in A.R.S. § 49-201, or other information likely to cause substantial harm to the person's competitive position:

1. Sufficient information about the facility for the Director to establish permit conditions to ensure compliance with, including to assess the applicability of, applicable provisions in A.R.S Title 49, Chapter 4, and this Article. Such information includes but is not limited to physical location; description; operations; operating history; the address of the facility's CCR website; a list of other federal or state environmental permits issued to the owner or operator for the facility where the CCR unit is located; and for surface impoundments, the current Arizona Department of Water Resources license pursuant to A.A.C. R12-15-1214.
2. Sufficient information about the owners and operators of each CCR unit at the facility for the Director to identify, contact, communicate with them and determine compliance with A.R.S. Title 49, Chapter 4 and this Article. Such information includes, but is not limited to contact information, ownership status (e.g., private, governmental) of each CCR unit and CCR-related solid waste management operation at the facility; and a description of allocated responsibilities among owners and operators of CCR units at the facility. Each owner and operator of a CCR unit shall sign and certify the accuracy of the application, unless an agreement is provided to the Director that one owner or operator is signing and certifying for the rest.
3. Sufficient technical information about each CCR unit at the facility necessary for the Director to establish permit conditions to require compliance with, including to assess the applicability of, applicable provisions in A.R.S. Title 49, Chapter 4 and this Article. Such information includes, but is not limited to the location, design, construction, operation, maintenance, closure and retrofit of each CCR unit, descriptions of all CCR and non-CCR wastestreams placed into a CCR unit, as well as liners, controls, monitoring approaches, the groundwater monitoring system, and corrective action or remedial measures.

4. Sufficient technical and other information about the geologic and hydrogeologic characteristics and features of the area surrounding each CCR unit, including subsurface characteristics, to support decisions by the Director to establish permit conditions to require compliance with, including to assess the applicability of, applicable provisions of this Article, and to evaluate the compliance approaches proposed in the permit application. The owner and operator shall provide, at a minimum, information about the following in proximity to the CCR unit(s): floodplains and wetlands, fault lines or unstable areas, groundwater and surface water, soil and subsoil characteristics, groundwater well locations and uses, adjacent land uses, and other similar information.

5. Sufficient technical and other information characterizing conditions surrounding each CCR unit for the Director to establish permit conditions to require compliance with, including to assess the applicability of, applicable provisions in this Article. This includes but is not limited to groundwater, aquifers, soil, or other sampling data; date and procedures used to characterize background concentrations; well construction diagrams and drill logs; hydrogeologic cross-sections; information about the activities that yielded the sampling data, including quality assurance data; delineation of contaminant plumes; and other relevant information required to make technical assessments to characterize the presence or absence of leakage or releases from the CCR unit.

6. Plans, maps, drawings, diagrams, and other visual information, in addition to narrative information, including, at a minimum:

   a. A site map, depicting the location of the CCR unit(s) and surrounding features representing site conditions, monitoring wells, and other pertinent information, including all known property lines, structures, water wells, injection wells, drywells and their uses, topography, the location of points of discharge, and all known borings.

   b. A topographic map, depicting each CCR unit, surrounding geologic and hydrogeologic features, surface water features, access and haul roads, and other pertinent information. Information in these maps must be provided to allow the Director to understand site conditions and evaluate

compliance strategies proposed by the owner and operator, to draft terms and conditions that will achieve compliance with the requirements of this Article.

c. Potentiometric maps depicting groundwater flow direction, all CCR units at the facility, any delineated plumes of contamination from releases from CCR units, all groundwater monitoring wells or other monitoring points where water level data were gathered, potable wells on the facility property or nearby property, and other pertinent information. A sufficient number and quality of maps are required to represent seasonal or temporal changes in groundwater flow direction.

d. Other documents, including: hydrogeologic cross-sections depicting subsurface conditions, drill logs, CCR unit construction diagram(s), and groundwater monitoring well construction diagrams.

e. All site-specific compliance plans and assessments required by this Article (e.g., fugitive emissions/dust control plan required by § 257.80, emergency action plan required by § 257.73, run-on and run-off control system plan required by § 257.81(c), inflow design flood control system plan required by § 257.82(c), closure plan or retrofit plan required by § 257.102, and post-closure care plan required by § 257.104).

f. All certifications and other documentation of decisions made or actions taken such as:

i. Certifications concerning the initial and periodic structural stability assessments required by §§ 257.73(d) and 257.74(d).

ii. Certifications concerning the initial and periodic safety factor assessments required by §§ 257.73(e) and 257.74(e).

iii. The inflow design flood certification under § 257.82(c)(5), the most recent inspection report required by § 257.83(b)(2), and the most recent hazard class certification required by § 257.73(a)(2)(ii).

iv. Documentation supporting a groundwater monitoring program meeting all requirements of 257.91 and 257.93 including

certifications that the design and construction of the system meets the requirements of 257.91 and that the statistical method for evaluating groundwater monitoring data is appropriate pursuant to § 257.93(f)(6). The groundwater monitoring program shall also demonstrate compliance with 257.94, 257.95, or 257.98, as applicable;

v. The most recent annual groundwater monitoring and corrective action report prepared pursuant to 257.90(e);

vi. Any notice of return to detection monitoring from assessment monitoring pursuant to § 257.95(e);

vii. Any alternative source demonstration pursuant to § 257.94(e)(2) or § 257.95(g)(3)(ii);

viii. Any assessment of corrective measures pursuant to § 257.96, along with the certification for any extension of time to complete the assessment and documentation of the public meeting required by § 257.96(e);

ix. Any selection of remedy required by § 257.97;

x. Documentation supporting implementation of the corrective action programs as required by § 257.98;

xi. A report describing any CCR units that the facility has closed since October 19, 2015. The report shall demonstrate that closure complied with the requirements of 40 CFR 257, subpart D at the time of closure, be certified by a qualified professional engineer, and shall include the post-closure plan, if applicable; and

xii. Technical data, such as design drawings and specifications, cost estimates, and engineering studies shall be certified by a qualified professional engineer.

7. The expected operational life of each CCR unit.

8. If submitting financial assurance as provided by A.R.S. § 49-770(C), the information required by R18-13-1020.

9. The applicable fee established in R18-13-1021.

10. Certification in writing that the information submitted in the application is true and accurate to the best of the knowledge of each owner and operator or as provided in subsection (D)(2) of this Section.

11. For any new CCR surface impoundment, and any lateral expansion, reconstruction, repair, or enlargement of a CCR surface impoundment, the information required by this Section, R18-13-1003.01, and R18-13-1010.01, prepared by or under the supervision of a qualified professional engineer.

    a. A construction quality assurance plan describing all aspects of construction supervision.

    b. The following may be submitted with the application or during construction.

        i. An emergency action plan as prescribed in 40 CFR 257.73 and 257.74 and R18-13-1003.02.

        ii. An operation and maintenance plan to accomplish the annual maintenance.

        iii. An instrumentation plan regarding instruments that evaluate the performance of the CCR surface impoundment.

12. For a CCR surface impoundment, a statement by a qualified professional engineer that determines the CCR surface impoundment's hazard class in accordance with this Article. The qualified professional engineer shall submit a map of the area that would be inundated by failure or improper operation of the CCR surface impoundment. The qualified professional engineer shall demonstrate whether failure or improper operation of the CCR surface impoundment would result in:

    a. Loss of human life. The demonstration may be based on an emergency action plan for persons who may be in the area of inundation;

    b. Significant incremental adverse consequences; or

    c. Significant intangible losses, as defined in R18-13-1001 and identified and evaluated by a public natural resource management or protection agency.

13. The Department may require additional information as necessary for the protection of human life, property, human health and the environment.

E. Completeness. When the Director receives an application containing the information

required by this Section for all applicable CCR units and CCR-related solid waste management operations at the facility and that meets the administrative completeness requirements of R18-1-503(A), the Director shall notify the owner or operator that the application is complete. The Department shall post a notice on the Department's website pursuant to R18-13-1018.

F. After a permit application is determined by the Director to be complete, and before permit issuance, the owner or operator shall notify the Director if any application components have changed or need to be added.

G. The owner or operator of a CCR unit that has submitted an application for dam modification to the Arizona Department of Water Resources related to a CCR surface impoundment after July 12, 2024 shall notify the Department within 30 days of submittal or the effective date of this rule, whichever is later. For the purposes of this subsection, an "application for dam modification" means an application submitted to the Arizona Department of Water Resources under A.A.C. R12-15-1208 through R12-15-1211.

R18-13-1010.01. Additional Application Requirements for Constructing or Modifying CCR Surface Impoundments for Applications Submitted After CCR Program Approval

A. The requirements in this Section are additional to those in 40 CFR 257, subpart D, as incorporated in this Article, and do not replace or negate any requirement of 40 CFR 257, subpart D, as incorporated herein.

B. Applications to Construct, Reconstruct, Repair, Enlarge, or Alter a High or Significant Hazard Potential CCR Surface Impoundment. An application to construct, reconstruct, repair, enlarge, alter or laterally expand a high or significant hazard potential CCR surface impoundment shall include the following prepared by or under the supervision of a qualified professional engineer:

1. All construction drawings as prescribed in subsection (G)(1) of this Section.
2. All construction specifications as prescribed in subsection (G)(2) of this Section.
3. An engineering design report that includes information needed to evaluate all aspects of the design of the CCR surface impoundment and appurtenances, including references with page numbers to support any assumptions used in the

design, as prescribed in subsection (G)(3) of this Section. The engineering design report shall recommend a safe storage level for existing CCR surface impoundments being reconstructed, repaired, enlarged, or altered.

4. A construction quality assurance plan describing all aspects of construction supervision.

C. Applications to Breach or Remove a High or Significant Hazard Potential CCR Surface Impoundment Embankment.

1. An application shall include plans for the excavation of the embankment down to the level of the natural ground at the maximum section. Upon approval of the Director, additional breaches may be made. This provision shall not be construed to require more than total removal of the embankment regardless of the flood magnitude. The breach or breaches shall be of sufficient width to pass the greater of:

   a. The 100-year flood at a depth of less than 5 feet, or

   b. The 100-year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the CCR surface impoundment.

2. The sides of each breach shall be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.

3. Each breach shall be designed to prevent silt or CCR that has previously been deposited on the reservoir bottom and the excavated material from the breach from washing downstream.

4. Before breaching the CCR surface impoundment embankment, the reservoir shall be emptied in a controlled manner that will not endanger lives or damage downstream property. The applicant shall obtain approval from the Director for the method of breaching or removal.

5. An application to breach or remove a high or significant hazard potential CCR surface impoundment embankment shall include the following prepared by or under the supervision of a qualified professional engineer:

   a. The construction drawing or drawings for the breach or removal of a CCR surface impoundment, including the location, dimensions, and lowest elevation of each breach.

b. A construction quality assurance plan describing all aspects of construction supervision.

6. Reduction of a high or significant hazard potential CCR surface impoundment to a size less than subsection (H)(1), (H)(2) or (H)(3) of this Section shall be approved pursuant to R18-13-1017 under the following circumstances:

a. The owner or operator shall submit a completed application and construction drawings for the reduction and the appropriate specifications, prepared by or under the supervision of a qualified professional engineer.

b. The construction drawings and specifications shall contain sufficient detail to enable a contractor to bid on and complete the project.

c. The plans shall comply with all requirements of this subsection (C) except that the breach is not required to be to natural ground.

d. Upon completion of the reduction to a size less than subsection (H)(1), (H)(2) or (H)(3) of this Section, the qualified professional engineer shall file as constructed drawings and specifications with the Department.

D. Applications to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential CCR Surface Impoundment

1. An application package to construct, reconstruct, repair, enlarge, or alter a low hazard potential CCR surface impoundment shall include the following prepared by or under the supervision of a qualified professional engineer:

a. Files of all construction drawings as prescribed by subsection (G)(1) of this Section.

b. Files of all construction specifications as prescribed by subsection (G)(2) of this Section.

c. An engineering design report that includes information needed to evaluate all aspects of the design of the CCR surface impoundment and appurtenances, including references with page numbers to support any assumptions used in the design, as prescribed in subsection (G)(3) of this Section.

2. An application package for the breach or removal of a low hazard potential CCR surface impoundment embankment shall include the following:

a. A completed application shall contain the following information:

i. The name and address of the owners and operators of the CCR surface impoundment.

ii. A description of the proposed removal.

iii. The proposed time for beginning and completing the removal.

b. A statement by a qualified professional engineer demonstrating both of the following:

i. That the CCR surface impoundment embankment will be excavated to the level of natural ground at the maximum section; and

ii. That the breach or breaches will be of sufficient width to pass the greater of:

(1) The 100-year flood at a depth of less than 5 feet, or

(2) The 100-year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the CCR surface impoundment embankment,

(3) This paragraph (ii) shall not be construed to require more than a total removal of the CCR surface impoundment embankment regardless of flood magnitude.

iii. That the sides of the breach will be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.

3. Within 90 days after completing removal of a low hazard potential CCR surface impoundment embankment, the owner or operator shall file the following:

a. A brief completion report, including a description of the causes for any changes or deviations from the approved application package prepared by the qualified professional engineer who supervised the construction, in accordance with A.R.S. Title 32, Chapter 1. The qualified professional engineer shall certify that the as removed drawings and the report accurately represent the actual removal of the CCR surface impoundment embankment.

b. As-removed drawings prepared and sealed by the qualified professional

engineer who supervised the removal. The owner or operator and the qualified professional engineer shall maintain a record of the drawings.

E. Construction of a High, Significant, or Low Hazard Potential CCR surface impoundment.

1. Before commencement of construction activities, the owner or operator shall invite to a pre-construction conference all involved regulatory agencies, the prime contractor, and all subcontractors. At this meeting the Department shall identify, to the extent possible, the key construction stages at which an inspection will be made. At least 48 hours before each key construction stage identified for inspection, the owner or operator or the owner's qualified professional engineer shall provide notice to the Department.
2. The owner or operator's qualified professional engineer shall oversee construction of a new CCR surface impoundment or the lateral expansion reconstruction, repair, enlargement, alteration, breach, or removal of an existing CCR surface impoundment.
3. A qualified professional engineer shall supervise or direct the supervision of construction in accordance with the construction quality assurance plan.
4. The owner or operator's qualified professional engineer shall submit summary reports of construction activities and test results according to a schedule approved by the Department.
5. The owner or operator shall immediately report to the Department any condition encountered during construction that requires a deviation from the approved plans and specifications.
6. The owner or operator shall promptly submit a written request for approval of any necessary change with sufficient information to justify the proposed change. The owner or operator shall not commence construction without the written approval of the Director unless the change is a minor change. A minor change is a change that complies with the requirements of this Article and provides equal or better safety performance.
7. Upon completion of construction, the owner or operator shall notify the Department in writing. The Department shall make a final inspection. The owner or operator shall correct any deficiencies noted during the inspection. The owner

shall not use the CCR surface impoundment before issuance of a permit or permit modification unless the Director issues written approval.

F. Completion Documents for a Significant or High Hazard Potential CCR Surface Impoundment. Within 90 days after completion of the construction or removal work for a significant or high hazard potential CCR surface impoundment and final inspection by the Department, the owner or operator shall file the following:

1. One set of full sized as constructed drawings prepared and sealed by the qualified professional engineer who supervised the construction. If changes were made during construction, the owner or operator shall file supplemental drawings showing the CCR surface impoundment and appurtenances as actually constructed.
2. Construction records, including grouting, materials testing, and locations and baseline readings for permanent bench marks and instrumentation, initial surveys, and readings.
3. Photographs of construction from exposure of the foundation to completion of construction.
4. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved drawings and specifications that were made during the construction phase.
5. A schedule for filling the impoundment, specifying fill rates, CCR surface or liquid level elevations to be held for observation, and a schedule for inspecting and monitoring the CCR surface impoundment.
6. An operating manual for the CCR surface impoundment and its appurtenant structures. The operating manual shall include a process for safety inspections prescribed in R18-13-1004. The operating manual shall include schedules for surveillance activities and baseline information for any installed instrumentation as follows:
    a. The frequency of monitoring,
    b. The data recording format,
    c. A graphical presentation of data, and

d. The person who will perform the work.

G. Construction Drawings, Construction Specifications, and Engineering Design Report for a High, Significant, or Low Hazard Potential CCR Surface Impoundment. The owner or operator and qualified professional engineer are responsible for complete and adequate design of a CCR surface impoundment and for including in the application all aspects of the design pertaining to the safety of the CCR surface impoundment.

1. Construction Drawing Requirements. The construction drawings required by subsections (B), (C), and (D) of this Section shall include the following:

a. The seal and signature of a qualified professional engineer.

b. One or more topographic maps of the CCR surface impoundment, spillway, outlet works, and reservoir on a scale large enough to accurately locate the CCR surface impoundment and appurtenances, indicate cut and fill lines, and show the property lines and ownership status of the land. Contour intervals shall be compatible with the height and size of the CCR surface impoundment and its appurtenances and shall show design and construction details.

c. A reservoir area and capacity curve that reflect area in acres and capacity in acre-feet in relation to depth of CCR and liquids and elevation in the reservoir. The construction drawings shall show the spillway invert and top of CCR surface impoundment elevations. The construction drawings shall also show the reservoir volume and space functional allocations. The construction drawings may include alternate scales as required for the owner or operator's use.

d. Spillway and outlet works rating curves and tables at a scale or scales that allow determination of discharge rate in cubic feet per second at both low and high flows as measured by depth of water passing over the spillway control section.

e. A location map showing the CCR surface impoundment footprint and all exploration drill holes, test pits, trenches, adits, borrow areas, and bench marks with elevations, reference points, and permanent ties. This map shall use the same vertical and horizontal control as the topographic map.

f. Geologic information including 1 or more geologic maps, profile along the centerline, and other pertinent cross sections of the CCR surface impoundment site, spillway or spillways, and appurtenant structures, aggregate and material sources, and reservoir area at 1 or more scales compatible with the site and geologic complexity, showing logs of exploration drill holes, test pits, trenches, and adits.

g. One or more plans of the CCR surface impoundment to delineate design and construction details.

h. Foundation profile along the CCR surface impoundment embankment centerline at a true scale where the vertical scale is equal to the horizontal scale, showing the existing ground and proposed finished grade at cut and fill elevations, including anticipated geologic formations. The foundation profile shall include any proposed grout and drain holes.

i. Profile and a sufficient number of cross sections of the CCR surface impoundment embankment to delineate design and construction details. The drawings shall illustrate and show dimensions of camber, details of the top, core zone, interior filters and drains, and other zone details. The profile of the CCR surface impoundment may be drawn to different horizontal and vertical scales if required for detail. A maximum section of the CCR surface impoundment shall be drawn to a true scale, where the vertical scale is equal to the horizontal scale. The outlet conduit may be shown on the maximum section if this is typical of the proposed construction.

j. One or more CCR surface impoundment embankment foundation plans showing excavation grades and cut slopes with any proposed foundation preparation, grout and drain holes, and foundation dewatering requirements.

k. Plan, profile, and details of the outlet works, including the intake structure, the gate system, conduit, trashrack, conduit filter diaphragm, conduit concrete encasement, and the downstream outlet structure. The drawings shall include all connection and structural design details.

l. Plan, profile, control section, and cross sections of the spillway, including details of any foundation preparation, grouting, or concrete work that is planned. A complex control structure, a concrete chute, or an energy dissipating device for a terminal structure shall include both hydraulic and structural design details.

m. Hydrologic data, drainage area and flood routing, and diversion criteria.

2. Construction Specification Requirements. The construction specifications required by subsections (B), (C) and (D) of this Section shall include the following:

a. The seal and signature of a qualified professional engineer.

b. The statement that the construction drawings and specifications shall not be materially changed without the prior written approval of the Director.

c. A detailed description of the work to be performed and a statement of the requirements for the various types of materials and installation techniques that will enter into the permanent construction.

d. The statement that construction shall not be considered complete until the Director has approved the construction in writing.

e. The statement that the owner or operator's qualified professional engineer shall control the quality of construction.

f. The following construction information:

i. All earth and rock material descriptions, placement criteria, and construction requirements for all elements of the CCR surface impoundment and related structures.

ii. All concrete, grout, and shotcrete material and mix descriptions, placement and consolidation criteria, temperature controls, and construction requirements for all elements of the CCR surface impoundment and related structures.

iii. Material criteria and material testing, cleaning, and treatment. If foundation or curtain grouting is required, the specifications shall describe the type of grout, grouting method, special equipment necessary, recording during grouting, and foundation monitoring to

avoid disturbance from grouting.

iv. All materials testing that will be performed by the contractor for pre-qualification of materials, including special performance testing, such as water pressure tests in conduits. The Director shall accept materials that are pre-tested successfully and constructed in-place in accordance with specifications.

v. A plan for control or diversion of surface water during construction. The design qualified professional engineer may determine frequency of storm runoff to be controlled during construction, commensurate with the risk of economic loss during construction.

vi. Criteria for blast monitoring and acceptable blast vibration levels, including particle velocities for the CCR surface impoundment and other critical appurtenances. Monitoring equipment and monitoring locations shall be specified.

vii. Instrumentation material descriptions, placement criteria, and construction requirements and a statement that instrumentation shall be installed by experienced specialty subcontractors.

3. Engineering Design Report Requirements. The engineering design report required by subsections (B), (C), and (D) of this Section shall include the following:

a. The seal and signature of a qualified professional engineer.

b. The classification under 40 CFR 257.74(a)(2) of the proposed CCR surface impoundment, or for the proposed lateral expansion of an existing CCR surface impoundment.

c. Hydrologic considerations, including calculations and a summary table of data used in determining the required emergency spillway capacity and freeboard, and design of any diversion or detention structures. The design report shall include input and output listings.

d. Hydraulic characteristics, engineering data, and calculations used in determining the capacities of the outlet works and emergency spillway. The design report shall include input and output listings.

e. Geotechnical investigation and testing of the CCR surface impoundment site and reservoir basin. Results and analysis of subsurface investigations, including logs of test borings and geologic cross sections.

f. Guidelines and criteria for blasting to be used by the contractor in preparing the blasting plan.

g. Details of the plan for control or diversion of surface water during construction.

h. Details of the dewatering plan for subsurface water during construction.

i. Testing results of earth and rock materials, including the location of test pits and the logs of these pits.

j. Discussion and design of the foundation blanket grouting, grout curtain, and grout cap based on foundation stability and seepage considerations.

k. Calculations and basic assumptions on loads and limiting stresses for reinforced concrete design. The design report shall include input and output listings.

l. A discussion and stability analysis of the CCR surface impoundment embankment including appropriate seismic loading, safety factors, and embankment zone strength characteristics. Analyses shall include both short-term and long-term loading on upstream and downstream slopes. The design report shall include input and output listings.

m. A discussion of seismicity of the project area and activity of faults in the vicinity. The design report shall use both deterministic and statistical methods and identify the appropriate seismic coefficient for use in analyses.

n. Discussion and design of the cutoff trench based on seepage and other considerations.

o. Permeability characteristics of foundation and CCR surface impoundment embankment materials, including calculations for seepage quantities through the CCR surface impoundment, the foundation, and anticipated in the internal drain system. The design report shall include input and output listings. The design report shall include copies of any flow nets used.

p. Discussion and design of internal drainage based on seepage quantity calculations. The design report shall include instrumentation necessary to monitor the drainage system and filter design calculations for protection against piping of foundation and embankment.

q. Erosion protection against waves and rainfall runoff for both the upstream and downstream slopes, as appropriate.

r. Discussion and design of foundation treatment to compensate for geological weakness in the CCR surface impoundment foundation and abutment areas and in the spillway foundation area.

s. Post-construction vertical and horizontal movement systems.

t. Discussion of foundation conditions including the potential for subsidence, fissures, dispersive soils, collapsible soils, and sink holes.

H. This Section consists of enhancements to 40 CFR 257, subpart D based on Arizona dam safety standards and apply in addition to 40 CFR 257, subpart D but do not apply to:

1. CCR surface impoundments with a maximum height of less than 6 feet, regardless of storage capacity;
2. CCR surface impoundments with a maximum height of between 6 and 25 feet and a storage capacity of less than 50 acre-feet; or
3. CCR surface impoundments with a maximum height greater than 25 feet and a storage capacity of 15 acre-feet or less.

R18-13-1011. Permit Contents

A. Standard permit conditions for CCR facility permits. The following conditions shall be incorporated into all CCR facility permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations shall be provided in the permit.

1. Duty to comply. The owner or operator shall comply with all conditions of this CCR facility permit, except to the extent and for the duration any noncompliance is authorized by the Director. Any unauthorized permit noncompliance constitutes a violation of this Article and is subject to enforcement action, permit termination, or denial of a permit application.

2. Duty to reapply. If the owner or operator wishes to continue an activity regulated by this permit after the expiration date of the permit, the owner or operator shall apply for and obtain a new permit.

3. Need to halt or reduce activity not a defense. It shall not be a defense for an owner or operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. Requirement to mitigate impacts of noncompliance. In the event of noncompliance with this permit, the owner or operator shall take all reasonable steps to minimize releases to the environment and shall carry out such measures as necessary to reduce reasonable probability of adverse impacts on health and the environment.

5. New statutory requirements or regulations. If the standards or regulations on which this permit is based change through changes to statute, promulgation of new or amended regulations, or by judicial decision, and this results in failure of the permit terms and conditions to ensure compliance with the revised standard or regulation, the owner or operator shall apply for a permit modification. The owner or operator shall submit an application to modify this permit to include the revised requirements within 180 days after the change becomes effective.

6. Proper operation and maintenance. The owner or operator shall ensure the proper operation and maintenance of all units, appurtenant structures, ancillary equipment and systems of treatment and control, which are installed or used to achieve compliance with the conditions of this permit. Failure to properly operate and maintain such equipment or structures does not excuse failure to comply with requirements in this permit. The term "Proper operation and maintenance" includes effective performance, adequate funding, adequate staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. Operation of back-up or auxiliary equipment or similar systems is required only when necessary to achieve compliance with the conditions of this permit.

7. Permit actions. This permit may be modified, or terminated for cause. The

application by the owner or operator for a permit modification, or termination, or anticipated noncompliance, does not stay any permit condition.

8. Property rights. The permit does not convey any property rights of any sort, nor any exclusive privilege.

9. Duty to provide information. The owner or operator shall furnish to the Director, within a reasonable time, any relevant information which the Director may request to determine whether cause exists for modifying, or terminating this permit, or to determine compliance with this permit. The owner or operator shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

10. Inspection and entry. The owner or operator shall allow the Director or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

    a. Enter at reasonable times upon the permitted premises where a regulated unit or activity is located or conducted, or where records that must be kept under the conditions of this permit are located;

    b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

    c. Inspect at reasonable times any units, appurtenant structures, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

    d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by this Article, any substances or parameters at any location.

11. Monitoring and records.

    a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

    b. The owner or operator shall retain records of all monitoring information, including all calibration, maintenance, and quality assurance records; all original monitoring data; copies of all reports and certifications required by this permit; and records of all data for a period of at least ten years

from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Director at any time. The owner or operator shall maintain records and data used to support a permit application for the lifetime of the permit. The owner or operator shall maintain records of all groundwater monitoring, including records of groundwater well construction and groundwater elevation measurements, throughout the active life of the unit, the post-closure care period and until completion of all corrective action.

12. Signatory requirements. All applications, reports, or information required to be submitted to the Director by this permit shall be signed and certified by each owner and operator of a CCR unit unless an agreement is provided to the Director that one owner or operator is certifying for the rest.

13. Reporting requirements.

a. Anticipated noncompliance. The owner or operator shall provide written or electronic notice to the Director as soon as possible, but no later than 60 days in advance of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

b. The owner or operator shall report to the Department by phone or electronically any noncompliance or release which has a reasonable probability of adverse effects on health or the environment as soon as possible, and no later than 24 hours after the time the owner or operator first becomes aware of the circumstances. The notification shall include the following:

i. Information concerning release of any CCR that may endanger public drinking water supplies.

ii. Any information about a release of CCR that could have a reasonable probability of adverse effects on health or the environment outside the facility.

iii. The description of the release and its cause shall include:

(A) Name, business address, business email address, and business telephone number of the owner and operator;

(B) Name, address, email address, and telephone number of the facility;

(C) Date, time, and type of release;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to the environment and human health outside the facility, where applicable;

(G) Estimated quantity and disposition of recovered material that resulted from the release; and

(H) Action taken to mitigate the risk, including any preparation in advance of a severe weather event

iv. A narrative shall also be posted on the facility CCR website no later than five days after the time the owner or operator becomes aware of the circumstances. The narrative shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Director may waive the five-day notice requirement in favor of posting a written report within fifteen days.

c. Where the owner or operator becomes aware that they failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Director, the owner or operator shall promptly submit such facts or corrected information to the Director.

14. Severability. Invalidation of a portion of this permit does not necessarily render the whole permit invalid. ADEQ intends that this permit remains in effect to the extent possible. In the event that any part of this permit is invalidated, the Director will advise the owner or operator as to the effect of such invalidation.

B. In addition to the standard conditions in subsection (A), the Director shall establish

permit terms and conditions in a CCR facility permit, on a case-by-case basis, in accordance with the requirements and procedures of A.R.S. Title 49, Chapter 4 and this Article. At a minimum, each CCR facility permit shall include all permit terms and conditions necessary to ensure compliance with A.R.S. Title 49, Chapter 4 and this Article.

C. Each CCR facility permit shall contain, either expressly or by reference, all requirements of this Article that are applicable to the permitted CCR units and CCR-associated solid waste management activities at the facility. In satisfying this provision, the Director may incorporate the applicable requirements directly into terms and conditions in the permit or incorporate them by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements shall be provided in the permit.

D. Protectiveness. Each CCR facility permit shall contain such terms and conditions as the Director determines are necessary to ensure there is no reasonable probability of adverse effects on safety, health or the environment from the solid waste management of CCR at the facility.

E. The owner or operator of a CCR surface impoundment shall install, maintain, and monitor instrumentation to evaluate the performance of the CCR surface impoundment. The Director shall require site-specific instrumentation that the Director deems necessary for monitoring the safety of the CCR surface impoundment when failure may endanger human life and property. Conditions that may require monitoring include land subsidence, earth fissures, embankment cracking, phreatic surface, seepage, and embankment movements.

F. The permit shall contain a safe storage level for each CCR surface impoundment.

G. A CCR facility permit is issued for a fixed term of ten years. The term of a permit shall not be extended by modification of the permit beyond the maximum duration specified in this subsection.

R18-13-1012. Compliance Schedules

A. The Director may include compliance schedules in the CCR facility permit according to subsection (B) or (C) below, or both.

B. The owner or operator shall follow a timeline for future compliance, if established in the

CCR facility permit, that provides for action from the owner or operator that is not required until after the date of permit issuance. The timeline shall establish dates for their achievement.

1. If the time necessary for completion of an interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall contain interim dates for submission of reports on progress toward completion of the interim requirement and shall indicate a projected completion date.
2. Unless otherwise specified in the permit, within 30 days after the applicable date specified in a compliance schedule, the owner or operator shall submit to the Department a report documenting that the required action was taken within the time specified.

C. When an owner or operator that has applied for a CCR facility permit will not be in compliance with one or more applicable requirements in A.R.S. Title 49, Chapter 4, or this Article at the time of permit issuance, the Director may include in the CCR facility permit a schedule of compliance. The schedule of compliance shall include an enforceable sequence of actions leading to compliance. This schedule of compliance shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the owner or operator is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements in A.R.S. Title 49, Chapter 4 or this Article on which it is based.

1. Time for compliance. Any schedule of compliance established in a CCR facility permit under subsection (C) shall require compliance as soon as feasible.
2. Interim dates. If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.
   a. The time between interim dates shall not exceed one year.
   b. The permit shall require posting on the facility's CCR website of reports of progress toward completion of the interim requirements and indicate a projected completion date. The time between progress reports shall not exceed six months.
3. Reporting. The permit shall require that, no later than 30 days following each

interim milestone deadline and the final deadline of the schedule of compliance, the owner or operator shall submit a report to the Director documenting that the required action was taken within the time specified and shall post a notification on the facility's CCR website of its compliance or noncompliance with the interim or final requirement.

D. After reviewing the activity pursuant to any schedule established under this Section, the Director may modify the CCR facility permit, based on changed circumstances relating to the required action.

R18-13-1013. CCR Facility Permit Issuance or Denial

A. The Director shall issue CCR facility permits after CCR program approval, based upon the information obtained by or made available to the Department, if the Director determines that the permit requires the owner or operator to comply with A.R.S. Title 49, Chapter 4, this Article and Article 17. The procedures in this Article related to permit applications are applicable before CCR program approval, except that the licensing time frames requirements of 18 A.A.C. 1 do not apply until CCR program approval.

B. The Director shall provide the owner or operator with written notification of the final decision to grant or deny the permit within the applicable licensing time frames requirements and include the following:

1. The owner or operator's right to appeal the final permit determination, including the number of days the owner or operator has to file an appeal and the name and telephone number of the Department contact person who can answer questions regarding the appeals process;
2. If the permit is denied, the reason for the denial with reference to the statute or rule on which the denial is based; and
3. The owner or operator's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

C. The Director may deny a CCR facility permit if the Director determines upon completion of the application process that the owner or operator has:

1. Failed or refused to correct a deficiency in the CCR facility permit application;
2. Failed to demonstrate that the CCR units and their operation will comply with the

requirements of A.R.S. Title 49, Chapter 4 and this Article. The Director shall base this determination on:

a. The information submitted in the CCR facility permit application,

b. Any information submitted to the Department following a public hearing, or

c. Any relevant information that is developed or acquired by the Department; or

3. Provided false or misleading information.

D. Upon denying a CCR facility permit, the Director shall issue an order directing the owner or operator to begin closure of all CCR units at the facility according to § 257.101.

R18-13-1014. CCR Permit Transfer

A. The owner or operator of a CCR unit shall notify the Department 30 days prior to the planned transfer of any portion of ownership or operational control of a CCR unit or facility. If prior notice is impractical, the owner or operator shall notify the Department as soon as practical. The new owner and operator shall submit a permit modification request prior to the transfer of ownership or operational control or as soon as practicable thereafter.

B. The new owner or operator:

1. Shall include a written agreement between the previous and new owner or operator indicating a specific date for transfer of all permit responsibility, coverage, and liability;

2. Submit the applicable initial fee for a minor permit modification established in R18-13-1021;

3. Demonstrate technical capability necessary to fully carry out the terms of the permit and financial capability according to R18-13-1020; and

4. Submit a signed statement that it has reviewed the permit and agrees to the terms of the permit including any compliance schedules or new terms needed as a result of the transfer.

C. An owner or operator shall continue to comply with all permit conditions until the Director modifies/transfers the permit, regardless of whether ownership or operational

control has already been transferred.

R18-13-1015. CCR Permit Termination

The Director may, after notice and opportunity for a hearing, terminate a CCR facility permit for any of the following causes:

1. Significant noncompliance by the owner or operator with the permit;
2. Failure by the owner or operator in the permit application or during the permit issuance process to fully disclose all relevant facts,
3. Misrepresentation by the owner or operator of any relevant facts at any time;
4. A determination by the Director that the permit fails to ensure there is no reasonable probability of adverse effects to health or the environment and the permitted activity can only be regulated to acceptable levels by permit termination.
5. The Director has determined that all permitted activities have ceased and the owner or operator has completed closure, the required post-closure care and any required corrective action.

R18-13-1016. Permit Renewals

A. To renew a CCR facility permit, the owner or operator shall submit an application under R18-13-1010 at least 180 days before the expiration date of the effective permit.

B. If the owner or operator has submitted a timely and complete application for renewal under R18-13-1010, the terms and conditions of the existing CCR facility permit continue in force beyond the expiration date of the permit, but only until the effective date of the issuance or denial of a revised CCR facility permit.

C. The owner or operator shall renew the CCR facility permit as long as any CCR unit remains operational or is closing, in corrective action or post-closure care.

R18-13-1017. Modification of a CCR Facility Permit

A. The Director may modify a CCR facility permit upon the request of the facility owner or operator or upon the Director's initiative.

1. The owner or operator may submit a request for CCR facility permit modification

in writing on a form provided by the Department with the applicable fee established in R18-13-1021, explaining the facts and reasons justifying the request.

2. The Department may modify a permit, classify the modification, and collect the appropriate fee if:

a. There are alterations, additions, or changes in the operation or condition of the permitted facility which occurred after permit issuance and require permit conditions or terms that are different or absent from those in the existing permit;

b. The Director has received new information after the permit has been issued that:

i. Was not available to the Director at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the inclusion of different permit conditions at the time of issuance to ensure compliance with A.R.S. Title 49, Chapter 4 and this Article, or

ii. Otherwise shows that modification is necessary to ensure that there is no reasonable probability of adverse effects on safety, health or the environment.

c. There is a change in an underlying regulatory or statutory requirement

d. An error or omission is discovered that makes the permit inconsistent with regulatory or statutory requirements.

B. Upon receiving a request from an owner or operator, the Department shall determine whether the application is complete and whether the modification would be major, minor, or administrative.

C. The Department shall process modification requests following the applicable licensing time-frames.

D. A modified CCR facility permit supersedes the previous CCR facility permit upon the effective date of the modification, except as provided in R18-13-1011(F).

E. Major permit modifications. A major modification is one that substantially alters the CCR unit or its operation requiring a material change to a substantive term, provision,

requirement, or a limiting parameter of a permit, or one that could substantially impact human health or the environment. The owner or operator shall not make any change that requires a major permit modification without approval from the Director. The list below contains examples of major modifications:

1. Add a new CCR unit including a new landfill unit, a lateral expansion, or a new surface impoundment unit not already authorized by a CCR facility permit, including replacing a CCR unit.
2. Increase the maximum permissible operating storage level of CCR and liquids at a CCR surface impoundment or raising the embankment.
3. Selection of a remedy under 40 CFR 257.97.

F. Minor permit modifications. A minor modification is a modification that makes a routine change to a substantive term, provision, requirement, or a limiting parameter of a permit. The Director shall follow procedures for a minor modification to a CCR facility permit for those nonmajor alterations, additions, or changes in the operation or condition of the permitted facility which occurred after permit issuance and which require permit conditions that are different or absent from those in the existing permit. The owner or operator shall not make any change that requires a minor permit modification without approval from the Director. Minor permit modifications include, but are not limited to, the following:

1. Incorporate a change to an Aquifer Water Quality Standard in 18 A.A.C. 9, or a Maximum Contaminant Level under 40 CFR §§ 141.62 and 141.66, which serves as the underlying basis for a permit condition;
2. Change a construction requirement, treatment method, or operational practice, if the alteration complies with the requirements of A.R.S. Title 49, Chapter 4 and this Article and provides equal or better performance;
3. Change to a groundwater sampling and analysis program including the following:
    a. A change in the statistical method for evaluating groundwater monitoring data required by 40 CFR 257.93(f)(6);
    b. A change to an alternative groundwater sampling and analysis frequency pursuant to 40 CFR 257.94(d) or 257.95(c);
    c. Assessment of corrective measures pursuant to 40 CFR 257.96;

d. Changes to an approved groundwater monitoring system, including reducing the number of groundwater monitoring wells, or making changes in location, depth, or design of groundwater monitoring wells required by the permit.

4. Change an interim or final compliance date in a compliance schedule, if the Director determines just cause exists for changing the date;

5. Change the owner or operator's financial assurance mechanism or estimates under R18-13-1020;

6. Transfer a permit under R18-13-1014;

7. Replace monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness, but not including routine maintenance or replacement of well components and related equipment;

8. Breaching or removing a surface impoundment embankment. These activities shall be performed according to R18-13-1010.01(C) and (D).

9. Add interim measures to the corrective action program or make material changes to the corrective action requirements in the permit.

10. Change a permit condition that is based on a change in an underlying regulatory or statutory requirement, unless it requires substantial changes to the design, operation, or compliance strategies established in the permit and requires the application of significant technical judgment or discretion.

11. Increases to estimates of the maximum extent of operations or the maximum inventory of waste in the closure plan.

12. Completion of closure activities of a CCR unit.

13. Modify a CCR unit, including physical changes or changes in management practices which are not administrative modifications under subsection (G) or major modifications under subsection (E).

G. Administrative permit modifications. The Director shall follow procedures for an administrative modification to a CCR facility permit to:

1. Correct a typographical error;

2. Change nontechnical administrative information, excluding a permit transfer;

3. Correct minor technical errors, such as errors in calculation not impacting any

design aspects, locational information, citation of laws and citations of construction specifications;

4. Increase the frequency, duration, or stringency of the requirements for inspections, maintenance activities, monitoring, reporting, recordkeeping, or web posting or to revise a laboratory method;

H. The Director may change the categorization of a CCR facility permit modification.

I. An owner or operator may request a permit modification based on actions from more than one category of permit modification. Where possible, the Director may combine several requested permit modifications into one modification from the highest category.

R18-13-1018. Public Notice Requirements for Permit Actions

A. The Director shall provide notice as described after determining an application complete for the following permit actions. The notice shall contain information about the licensing timeframes for the permit action and describe how a person can inspect all permit application materials, either in person or online.

1. An initial or renewed CCR facility permit;
   a. On the ADEQ website;
   b. To anyone requesting such notice;
   c. To the entities listed in A.R.S. § 49-111.
2. A major modification to a CCR facility permit;
   a. On the ADEQ website;
   b. To anyone requesting such notice;
   c. To the entities listed in A.R.S. § 49-111.
3. A minor modification to a CCR facility permit;
   a. On the ADEQ website;
   b. To anyone requesting such notice.

B. The Director shall provide notice as described when proposing to issue or deny the items listed below. The notice shall describe how a person can inspect all permit application materials, either in person or online.

1. An initial or renewed CCR facility permit;
   a. Once, in a daily or weekly newspaper of general circulation where the

facility is located;

b. On the ADEQ website;

c. To anyone requesting such notice;

d. By requiring the owner or operator to place paper copies of a notice and supplemental information in a local library or community center.

2. A major modification to a CCR facility permit;

a. Once, in a daily or weekly newspaper of general circulation where the facility is located;

b. On the ADEQ website;

c. To anyone requesting such notice;

d. By requiring the owner or operator to place paper copies of a notice and supplemental information in a local library or community center.

C. The Director shall provide notice as described when issuing or denying the following:

1. An initial or renewed CCR facility permit;

a. To anyone who commented on the proposed initial or renewed CCR facility permit;

b. On the ADEQ website;

c. To anyone requesting such notice.

2. A major modification to a CCR facility permit;

a. To anyone who commented on the proposed major modification;

b. On the ADEQ website;

c. To anyone requesting such notice.

3. A minor modification to a CCR facility permit;

a. On the ADEQ website;

b. To anyone requesting such notice.

4. An administrative permit modification;

a. To anyone requesting such notice.

D. The Director shall provide notice as described when terminating a CCR facility permit:

1. On the ADEQ website;

2. To anyone requesting such notice.

E. The notice for a permit action under subsection (B)(1) or (B)(2) shall:

1. Include a brief summary of the draft document,
2. Contain information about the licensing timeframes for the permit action and explain where further information on the permit action can be obtained,
3. Describe when and how comments may be made,
4. Provide at least 30 days for comments from publication of the notice, and
5. Explain how a public hearing may be requested.

F. After a notice is issued under subsection (B)(1) or (B)(2), the Department shall schedule a public hearing if requested and if the Director determines there is sufficient public interest. The Director shall provide notice of the hearing as provided in subsection (B)(1)(a) or (B)(2)(a) at least 30 days before the hearing. The Department may conduct a public hearing for a CCR facility permit or major modification virtually.

G. The Department shall respond to comments received on the proposed CCR facility permit or major modification when the final decision is made under subsection (C). The Department shall send a copy of the comment responses to all commenters and notify commenters of their potential rights under A.R.S § 41-1092.03(B). The Department shall send the comment responses to commenters and anyone requesting a copy and post the comment responses on the Department's website.

R18-13-1019. Compliance; ADEQ Inspections; Violations and Enforcement

A. ADEQ Inspection and Entry. For purposes of ensuring compliance with the provisions of Title 49 and this Article, the owner or operator of a CCR facility, shall, upon request of any representative of ADEQ designated by the Director, furnish information pertaining to such CCR facility.

B. ADEQ Inspection and Entry for CCR units. The Director or a designated representative may enter at reasonable times upon private or public property and the owner or operator shall permit such entry, where a CCR surface impoundment is located, including a CCR surface impoundment under construction, reconstruction, repair, enlargement, alteration, breach, or removal, for any of the following purposes:

1. To enforce the conditions of approval of the construction drawings and specifications related to an application for construction, reconstruction, repair, enlargement, alteration, breach, or removal.

2. To inspect a CCR surface impoundment that is subject to this Article.

3. To investigate or assemble data to aid review and study of the design and construction of CCR surface impoundments, reservoirs, and appurtenances or make watershed investigations to facilitate decisions on public safety to fulfill the duties of this Article and A.R.S. Title 49, Chapter 4.

4. To ascertain compliance with this Article and A.R.S. Title 49, Chapter 4.

C. ADEQ Inspection and Entry for CCR surface impoundments. The Director or a designated representative may enter at reasonable times upon private or public property and the owner or operator shall permit such entry, where a CCR surface impoundment is located, including a CCR surface impoundment under construction, reconstruction, repair, enlargement, alteration, breach, or removal, for any of the following purposes:

1. To enter any establishment or other place maintained by such person where such CCR units are or have been operated;

2. To have access to, and to copy all records relating to CCR units;

3. To inspect any facilities, equipment (including monitoring and control equipment), practices, and operations, relating to CCR units;

4. To inspect, monitor, and obtain samples from such person of any CCR units and monitoring and control equipment; and

5. To record any inspection by use of written, electronic, magnetic and photographic media.

D. Upon receipt of a complaint that a CCR surface impoundment is endangering people or property:

1. The Director shall inspect the CCR surface impoundment unless there is substantial cause to believe the complaint is without merit.

2. The Director shall provide a written report of the inspection to the complainant and the CCR surface impoundment owner.

E. Penalties. A person who violates any CCR facility permit, provision of this Article, or order issued pursuant to a CCR facility permit is subject to civil and/or criminal penalties pursuant to A.R.S. §§ 49-783 and 791, as amended. Nothing in this Article shall be construed to limit the Director's or Attorney General's enforcement powers authorized by law including but not limited to the seeking or recovery of any civil or criminal penalties.

F. A certification statement may be required on written submittals to ADEQ in response to Compliance Orders or in response to information requested pursuant to subsection (B) of this Section. In addition, ADEQ may request in writing that a certification statement appear in any written submittal to ADEQ. The certification statement shall be signed by a person authorized to act on behalf of the company or empowered to make decisions on behalf of the company on the matter contained in the document.

G. The Director shall conduct a CCR surface impoundment safety inspection annually or more frequently for each high hazard potential CCR surface impoundment, triennially for each significant hazard potential CCR surface impoundment, and once every five years for each low hazard potential CCR surface impoundment.

R18-13-1020. Financial Assurance Requirements

A. The owner or operator of a CCR unit shall submit both of the following for each CCR unit within 180 days of CCR program approval:

1. The latest demonstration of financial responsibility made for the CCR facility under 18 A.A.C. 9, Article 2.
2. If not already submitted with a permit application before CCR program approval, the following third-party cost estimates that are representative of regional fair market costs for each CCR unit at the facility within 180 days after CCR program approval:
   a. The estimate for the Cost of Facility Closure that meets the requirements in 40 CFR §§ 257.102 and 257.103, consistent with the closure plans submitted thereunder;
   b. The estimate for the Cost to Ensure Proper Post-Closure Care according to 40 CFR § 257.104, consistent with the post-closure plan submitted thereunder;
   c. The estimate for the Cost to Perform Corrective Action as a result of any known releases from the facility as provided under 40 CFR §§ 257.97 and 257.98 and any compliance schedules in the facility permit.

B. A CCR facility that submits a demonstration under subsection (A)(1) shall update that demonstration to comply with subsection (A)(2) before a CCR facility permit is issued. The owner or operator shall demonstrate financial assurance for the total amounts in

subsection (A)(2) using one or more mechanisms in Article 17 of this Chapter.

C. The cost estimates shall be dated and updated every 3 years and as necessary whenever closure plans or post-closure plans are amended pursuant to §§ 257.102(b)(3) or 257.104(d)(3), or corrective action costs are changed under § 257.98.

R18-13-1021. Fees

A. After CCR program approval, the Department shall send an invoice to each CCR facility and the owner or operator of a CCR facility shall pay to ADEQ an annual registration fee as shown in Table 2. The invoice shall have a due date of the first of a month that is at least 30 days after CCR program approval and the fee shall be due on that date and annually thereafter on the first of that month.

Table 2. Facility Annual Registration Fees

CCR Unit	**Annual Fee**
CCR Surface Impoundment	$17,450 each
Approved CCR Multi-unit	$21,860
CCR Landfill	$13,150 each
Closed CCR Unit subject to post-closure	$10,200 each

B. When submitting an application for any of the license types in Table 3 below, an owner or operator shall remit to ADEQ an initial application fee as shown in the Table.

Table 3. CCR Facility Permitting Fees

License Type	**Initial Fee**	**Maximum Fee**
CCR Facility Permit (new or renewal)	$20,000	$200,000
Major Modification	$10,000	$100,000
Minor Modification	$5,000	$50,000
Administrative Modification	$1,500 flat fee	NA

C. If the total cost of processing the application identified in the Table 3 is less than the

initial fee listed in the Table, the Department shall refund the difference between the total cost and the amount listed in the Table to the owner or operator.

1. Permits and permit modifications. If the total cost of processing the application is greater than the initial fee received plus other amounts paid, the Department shall bill the owner or operator for the difference upon permit approval. The owner or operator shall pay the difference in full before ADEQ issues the permit or modification.

2. Withdrawals. In the event of a withdrawal of the permit application by the owner or operator, if the total costs of processing the application are less than the amount paid, the Department shall refund the difference. If the total costs are greater than the amount paid, the Department shall bill the owner or operator for the difference, and the owner or operator shall pay the difference within 45 days of the date of the bill.

D. For the permitting actions in Table 3, the Department shall provide the owner or operator itemized bills at least quarterly for the expenses associated with evaluating the application and approving or denying the permit or permit modification. The invoice shall be paid within 30 days of receipt. The following information shall be included in each bill:

1. The dates of the billing period;

2. The date and number of review hours itemized by employee name, position type and specifically describing:

   a. Each review task performed,

   b. Each CCR unit involved, and

   c. The hourly rate;

3. A description and amount of review-related costs as described in subsection (E)(2); and

4. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.

E. For the permitting actions in Table 3, fees shall consist of processing charges and review-related costs as follows:

1. Processing charges. The Department shall calculate the processing charges using a

rate of $244 per hour, multiplied by the number of review hours, including pre-application meetings with the Department, used to evaluate and approve or deny the permit or permit modification.

2. Review-related costs means any of the following costs applicable to a specific application:
   a. Per diem expenses,
   b. Transportation costs,
   c. Reproduction costs,
   d. Laboratory analysis charges performed during the review of the permit or permit modification,
   e. Public notice advertising and mailing costs,
   f. Presiding officer expenses for public hearings on a permitting decision,
   g. Court reporter expenses for public hearings on a permitting decision,
   h. Facility rentals for public hearings on a permitting decision
   i. Costs related to the public notice required by R18-13-1018.
   j Other reasonable and necessary review-related expenses documented in writing by the Department.
3. Total itemized billings for an application shall not exceed the maximum amounts listed in Table 3 in this Section.
4. Beginning January 1, 2026, the Director shall adjust the amounts in Table 2, Table 3, and subsection (E)(1) above annually by the following method:
   a. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
   b. Round the result from subsection (E)(4)(a) of this Section to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

ARTICLE 17. FINANCIAL ASSURANCE

R18-13-1701. Definitions

R18-13-1703. Financial Demonstrations for CCR Facilities

R18-13-1704. Financial Assurance Mechanisms

ARTICLE 17. FINANCIAL ASSURANCE

R18-13-1701. Definitions

1. "Book net worth" means the net difference between total assets and total liabilities.
2. "Face amount" means the total amount the insurer is obligated to pay under the policy.
3. "Net working capital" means current assets minus current liabilities.
4. "Substantial business relationship" means a pattern of recent or ongoing business transactions to the extent that a guaranty contract issued incident to that relationship is valid and enforceable.
5. "Tangible net worth" means an owner or operator's book net worth, plus subordinated debts, less goodwill, patent rights, royalties, and assets and receivables due from affiliates or shareholders.

R18-13-1703. Financial Demonstrations for CCR Facilities

A. Financial demonstration. The owner or operator of a of a CCR facility for which a financial demonstration is required under this Chapter shall demonstrate financial capability to meet all of the following based on third-party cost estimates that are representative of regional fair market costs:

1. Cost of Facility Closure for all applicable units at the facility,
2. Cost to Ensure Proper Post-Closure Care for all applicable units at the Facility, and
3. Cost to perform any corrective action as a result of known releases at all applicable units at the facility

B. The owner or operator shall:

1. Submit a letter signed by the chief financial officer stating that the owner or operator is financially capable of meeting the costs described in subsection (A);
2. For a state or federal agency, county, city, town, or other local governmental

entity, submit a statement specifying the details of the financial arrangements used to meet the estimated costs described in subsection (A), including any other details that demonstrate how the owner or operator is financially capable of meeting those costs;

3. For other than a state or federal agency, county, city, town, or other local governmental entity, submit the information required for at least one of the financial assurance mechanisms listed in R18-13-1704 that covers the closure, post-closure, and corrective action costs submitted under subsection (A), including:

   a. The selected financial mechanism or mechanisms;

   b. The amount covered by each financial mechanism;

   c. The institution or company that is responsible for each financial mechanism used in the demonstration;

   e. Any other details that demonstrate how the owner or operator is financially capable of meeting the costs described in R18-13-1020(A)(2) or other applicable rules in this Chapter.

R18-13-1704. Financial Assurance Mechanisms

The owner or operator of a CCR facility for which a financial demonstration under R18-13-1703 is required by this Chapter may use any one or a combination of the following mechanisms to cover the financial assurance obligations under R18-13-1703(A):

1. Financial test for self-assurance. If an owner or operator uses a financial test for self-assurance, the owner or operator shall not consolidate the financial statement with a parent or sibling company. The owner or operator shall make the demonstration in either subsection (1)(a) or (b) and submit the information required in subsection (1)(c):

   a. The owner or operator may demonstrate:

      i. One of the following:

         (1) A ratio of total liabilities to net worth less than 2.0 and a ratio of current assets to current liabilities greater than 1.5;

         (2) A ratio of total liabilities to net worth less than 2.0 and a

ratio of the sum of net annual income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or

(3) A ratio of the sum of net annual income plus depreciation, depletion, and amortization to total liabilities greater than 0.1 and a ratio of current assets to current liabilities greater than 1.5;

ii. The net working capital and tangible net worth of the owner or operator each are at least six times the closure, post-closure and corrective action cost estimates; and

iii. The owner or operator has assets in the U.S. of at least 90 percent of total assets or six times the closure, post-closure and corrective action cost estimates; or

b. The owner or operator may demonstrate:

i. The owner or operator's senior unsecured debt has a current investment-grade rating as issued by Moody's Investor Service, Inc.; Standard and Poor's Corporation; or Fitch Ratings;

ii. The tangible net worth of the owner or operator is at least six times the closure, post-closure and corrective action cost estimates; and

iii. The owner or operator has assets in the U.S. of at least 90 percent of total assets or six times the closure, post-closure and corrective action cost estimates; and

c. The owner or operator shall submit:

i. A letter signed by the owner or operator's chief financial officer that identifies the criterion specified in subsection (1)(a) or (b) and used by the owner or operator to satisfy the financial assurance requirements of this Section, an explanation of how the owner or operator meets the criterion, and certification of the letter's accuracy, and

ii. A statement from an independent certified public accountant verifying that the demonstration submitted under subsection (1)(c)(i) is accurate based on a review of the owner or operator's financial statements for the latest completed fiscal year or more

recent financial data and no adjustment to the financial statement is necessary.

2. Performance surety bond. The owner or operator may use a performance surety bond if all the following conditions are met:

   a. The company providing the performance bond is listed as an acceptable surety on federal bonds in Circular 570 of the U.S. Department of the Treasury;

   b. The bond provides for performance of all the covered items listed in R18-13-1703(A) by the surety, or by payment into a standby trust fund of an amount equal to the penal amount if the owner or operator fails to perform the required activities;

   c. The penal amount of the bond is at least equal to the amount of the cost estimate developed in R18-13-1703(A) if the bond is the only method used to satisfy the requirements of this Section or a pro-rata amount if used with another financial assurance mechanism;

   d. The surety bond names the Arizona Department of Environmental Quality as beneficiary;

   e. The original surety bond is submitted to the Director;

   f. Under the terms of the bond, the surety is liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond; and

   g. The surety payments under the terms of the bond are deposited directly into the Standby Trust Fund.

3. Certificate of deposit. The owner or operator may use a certificate of deposit if the following conditions are met:

   a. The owner or operator submits to the Director one or more certificates of deposit made payable to or assigned to the Department to cover the owner or operator's financial assurance obligation or a pro-rata amount if used with another financial assurance mechanism;

   b. The certificate of deposit is insured by the Federal Deposit Insurance Corporation and is automatically renewable;

c. The bank assigns the certificate of deposit to the Arizona Department of Environmental Quality;

d. Only the Department has access to the certificate of deposit; and

e. Interest accrues to the owner or operator during the period the owner or operator gives the certificate as financial assurance, unless the interest is required to satisfy the requirements in R18-13-1703(A).

4. Trust fund. The owner or operator may use a trust fund if the following conditions are met:

a. The trust fund names the Arizona Department of Environmental Quality as beneficiary, and

b. The trust is initially funded in an amount at least equal to:

i. The cost estimate for the items submitted under R18-13-1703(A),

ii. The amount specified in a compliance schedule approved in a CCR facility permit, or

iii. A pro-rata amount if used with another financial assurance mechanism.

5. Letter of credit. The owner or operator may use a letter of credit if the following conditions are met:

a. The financial institution issuing the letter is regulated and examined by a federal or state agency;

b. The letter of credit is irrevocable and issued for at least one year in an amount equal to the cost estimate submitted under R18-13-1703(A) or a pro rata amount if used with another financial assurance mechanism. The letter of credit provides that the expiration date is automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and the Director 90 days in advance of cancellation or expiration. The owner or operator shall provide alternate financial assurance within 60 days of receiving the notice of expiration or cancellation;

c. The financial institution names the Arizona Department of Environmental

Quality as beneficiary for the letter of credit; and

d. The letter is prepared by the financial institution and identifies the letter of credit issue date, expiration date, dollar sum of the credit, the name and address of the Department as the beneficiary, and the name and address of the owner or operator.

6. Insurance policy. The owner or operator may use an insurance policy if the following conditions are met:

a. The insurance is effective before signature of the permit or substitution of insurance for other extant financial assurance instruments posted with the Director;

b. The insurer is authorized to transact the business of insurance in the state and has an AM BEST Rating of at least a B+ or the equivalent;

c. The owner or operator submits a copy of the insurance policy to the Department;

d. The insurance policy guarantees that funds are available to pay costs for all items listed under R18-13-1703(A) without a deductible. The policy also guarantees that once cleanup steps begin that the insurer will pay out funds to the Director or other entity designated by the Director up to an amount equal to the face amount of the policy;

e. The policy guarantees that while closure, post-closure, or corrective action activities are conducted the insurer will pay out funds to the Director or other entity designated by the Director up to an amount equal to the face amount of the policy;

f. The insurance policy is issued for a face amount at least equal to the current cost estimate submitted to the Director for performance of all items listed under R18-13-1703(A) or a pro-rata amount if used with another financial assurance mechanism. Actual payments by the insurer will not change the face amount, although the insurer's future liability is reduced by the amount of the payments, during the policy period;

g. The insurance policy names the Arizona Department of Environmental Quality as additional insured;

h. The policy contains a provision allowing assignment of the policy to a successor owner or operator. The transfer of the policy is conditional upon consent of the insurer and the Department; and

i. The insurance policy provides that the insurer does not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy, at a minimum, provides the insured with a renewal option at the face amount of the expiring policy. If the owner or operator fails to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the Director 90 days in advance of the cancellation. If the insurer cancels the policy, the owner or operator shall provide alternate financial assurance within 60 days of receiving the notice of cancellation.

7. Cash deposit. The owner or operator may use a cash deposit if the cash is deposited with the Department to cover the financial assurance obligation under R18-13-1703(A).

8. Guarantees.

a. The owner or operator may use guarantees to cover the financial assurance obligations under R18-13-1703(A) if the following conditions are met:

i. The owner or operator submits to the Department an affidavit certifying that the guarantee arrangement is valid under all applicable federal and state laws. If the owner or operator is a corporation, the owner or operator shall include a certified copy of the corporate resolution authorizing the corporation to enter into an agreement to guarantee the owner or operator's financial assurance obligation;

ii. The owner or operator submits to the Department documentation that explains the substantial business relationship between the guarantor and the owner or operator;

iii. The owner or operator demonstrates that the guarantor meets conditions of the financial mechanism listed in subsection (1). For purposes of applying the criteria in subsection (1) to a guarantor,

substitute "guarantor" for the term "owner or operator" as used in subsection (1);

iv. The guarantee is governed by and complies with state law;

v. The guarantee continues in full force until released by the Director or replaced by another financial assurance mechanism listed under subsection (1);

vi. The guarantee provides that, if the owner or operator fails to perform closure, post-closure care or corrective action of a facility covered by the guarantee, the guarantor shall perform or pay a third party to perform closure, post-closure care or corrective action, as required by the permit, or establish a fully funded trust fund as specified under subsection (4) in the name of the owner or operator; and

vii. The guarantor names the Arizona Department of Environmental Quality as beneficiary of the guarantee.

b. Guarantee reporting. The guarantor shall notify or submit a report to the Department within 30 days of:

i. An increase in financial responsibility during the fiscal year that affects the guarantor's ability to meet the financial demonstration;

ii. Receiving an adverse auditor's notice, opinion, or qualification; or

iii. Receiving a Department notification requesting an update of the guarantor's financial condition.

9. An owner or operator may use a financial assurance mechanism not listed in subsections (1) through (8) if approved by the Director.

B. Loss of coverage. If the Director believes that an owner or operator will lose financial capability under this Section, the owner or operator shall, within 30 days from the date of receipt of the Director's request, submit evidence that the financial demonstration under R18-13-1703 is being met or provide an alternative financial assurance mechanism.

C. Financial assurance mechanism substitution. An owner or operator may substitute one financial assurance mechanism for another if the substitution is approved by the Director through a permit modification or other Department approval.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT
NOTICE OF FINAL RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 13. SOLID WASTE MANAGEMENT

ADEQ separated the economic, small business, and consumer impacts of these rules into two major categories: 1) Those parts of the rules that would enact into Arizona rules nonprocedural standards that already apply; and 2) Additional requirements that would apply for the first time at some point after these rules are effective.

Existing requirements. These rules enact already existing standards from the United States Environmental Protection Agency (EPA) and the Arizona Dept. of Water Resources (ADWR) into ADEQ rules. ADEQ believes that where these CCR rules match existing standards, they do not have any direct negative impact on the four facilities in Arizona that will require a CCR facility permit. There are two groups of already existing standards:

1) 40 CFR 257, subpart D, for all CCR units. There will be no impact here because this rule is neither more or less stringent than this federal subpart for nonprocedural standards, and the Arizona CCR facilities are already subject to those federal standards.

2) Arizona Dept. of Water Resources (ADWR) rules at 12 A.A.C. 15, Article 12, that apply to CCR surface impoundments. Although these standards are stricter than 40 CFR 257, subpart D, there will be no impact here because surface impoundments at CCR facilities have already been subject to those ADWR rules, including the requirements in R18-13-1010.01 related to getting a license from ADWR.

ADEQ believes that because ADEQ will be replacing other agencies as the enforcing agency for standards that will remain the same, the rules will have a positive impact on the CCR facilities as well as the local community by enabling communication with a single, local agency. As an example, when cycling down and closing CCR units, a month delay can cost hundreds of thousands of dollars. A phone call to a state employee, who is not responsible for facilities in multiple states, and that may have already visited the site, is virtually certain to result in less delay. This advantage for CCR facilities will be offset in part by the permit processing and annual registration fees in this rule.

Additional requirements. Pursuant to statute, these rules create requirements for CCR facilities additional to those already existing in the following areas:

1) Aquifer protection standards developed under ADEQ statutes and rules for non-CCR wastestreams. (see R18-13-1005(B) and (F)). Although these standards are additional to 40 CFR 257, subpart D, there will be little to no impact here because CCR facilities were already subject to these standards under their ADEQ Aquifer Protection Permit (APP) and the final rule limits the stringency of any requirements in this area to what was previously required.

2) New ADEQ permitting requirements. There are currently no permitting requirements for CCR units in Arizona. The requirement that CCR units be covered under an APP was removed in 2022 by Ch. 178 as a consequence of their being regulated under 40 CFR 257, subpart D. ADWR currently requires licenses for CCR surface impoundments because they are classified as dams. The new permitting requirements are contained in R18-13-1010 through R18-13-1021.The ADWR licensing requirement for CCR surface impoundments ends when an impoundment is covered by an ADEQ permit under an EPA approved program. See A.R.S. § 45-1201(1)(f).

Federal law requires that CCR units be eventually covered under either a federally approved state program or the federal permit program. In February, 2020, EPA proposed its permitting program in a new 40 CFR 257, subpart E, but it is currently on an uncertain timetable. There is no federal or state requirement that ADEQ match the federal permitting rules that will be adopted in subpart E. However, ADEQ has made its permitting rules match EPA's proposed rules where possible to avoid unintended extra impact should both apply at the same time when final. This strategy also increases confidence in EPA's evaluation of the Arizona program. In some areas however, ADEQ's own permitting requirements may exceed, or at least be additional to, what will be required under future EPA permitting requirements for non-participating states. These extra requirements may impact Arizona's CCR facilities.

3) Financial assurance. There is no federal requirement that CCR facilities provide financial assurance. However, state authorizing legislation for this rule has required it for Arizona CCR facilities, and it is included in R18-13-1020. ADEQ notes that these facilities were already meeting financial assurance requirements for their CCR units under previous APPs,

and that the legislature has indicated its intent that ADEQ recognize this financial assurance, "in whole or in part." (See A.R.S. § 49-770(D)) Thus, any impacts of the financial assurance requirement will be lessened to some degree. However, ADEQ expects that the impact of financial assurance on CCR facilities may be greater for CCR units than what was required for their APP because of the more detailed closure, post-closure and corrective action requirements that exist in 40 CFR 257, subpart D.

4) Annual registration fees and permit processing fees. These fees are set out in R18-13-1021. Permit processing fees could begin after this rule is effective if any facility opts to apply early, although ADEQ expects most of these impacts to begin after CCR program approval. The annual registration fees for CCR facilities begin after CCR program approval. The annual fees are designed to cover ADEQ's non-permit related costs in administering the state CCR program. EPA proposed no fees in its CCR permit program.

Cost benefit analysis. ADEQ estimated the additional annual cost to implement the CCR permit program at $158,760, separate from the cost of processing permits. ADEQ based the annual registration fees on this estimate. Three additional full-time equivalent employees (FTEs) were estimated to be necessary to implement the CCR program: an inspector, a permit writer, and a geotechnical engineer. All but the permit writer have already been hired. All of the FTE permit writer's time on CCR will be billed processing permits.

Under A.R.S. § 49-104(B)(17), ADEQ fees must "be fairly assessed and impose the least burden and cost to the parties subject to the fees." ADEQ believes its estimate of the annual cost of the program not covered by permit processing fees is the lowest possible and therefore imposes the least burden and cost. Further, the annual registration fees in R18-13-1021(A) are based on the number and complexity of CCR units at each facility. This formula was arrived at after discussion with the affected stakeholders, and it is roughly proportional to the amount of time ADEQ will likely spend relative to each facility. In ADEQ's judgment, it is the best way to fairly assess the annual registration fees.

The hourly rate in R18-13-1021(E)(1) covers "the cost of administrative services and other expenses associated with evaluating" permits. It is based not only on the state's total cost for the employees billing the hours, but also a portion of the operational overhead of the Solid Waste section's employees not directly assigned to CCR facilities full time, such as

supervisors, other engineers, and administrative staff. ADEQ estimated the total number of hours the permit writer would be able to bill annually after comparing its experience processing hazardous waste permits which are similar in length and complexity and factoring in annual leave, sick leave, required training and other types of nonbillable time.

As a consequence of ADEQ setting its annual registration and permit processing fees at a level imposing the least burden on stakeholders, ADEQ had to plan for possible increases in its costs due to inflation. An annual adjustment to these fees based on a regional consumer price index was added at R18-13-1021(E)(4) in order for ADEQ to maintain its obligations under the program while keeping the cost at the least burdensome level.

The overall cost to ADEQ is expected to be balanced by the fees it collects. As explained earlier, there are significant potential benefits to both the local community and CCR facilities to having a single local agency handle all aspects of the federal CCR program. In spite of the fees necessary to cover the cost of the program, Arizona's CCR facilities have supported ADEQ's development of a state permit program as early as 2018, when CCR permitting was planned to be added to the Aquifer Protection Permit in ADEQ's Water Quality Division. ADEQ believes the overall benefits for all parties involved exceed the overall costs.

Arizona G&T Cooperatives
Touchstone Energy® Cooperatives

August 14, 2024

Via Email at wasterulemaking@azdeq.gov

Mr. Mark Lewandowski
Department of Environmental Quality Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007

RE: Notice of Proposed Rulemaking dated July 12, 2024
Comments on Arizona Coal Combustion Residuals Permit Program

Dear Mr. Lewandowski:

Arizona Electric Power Cooperative, Inc. (AEPCO) appreciates the opportunity to comment on the above-referenced proposed rulemaking for a state CCR program (the Arizona CCR Program or Proposed Rule). As a future permittee, AEPCO has a direct stake in an effective, workable Arizona CCR Program. Thank you for considering AEPCO's perspective on Proposed Rule through our lens of experience complying with the federal coal combustion residuals rule (the CCR Rule).

Introduction

AEPCO is a not-for-profit generation and transmission electric utility cooperative headquartered in Benson, Arizona. AEPCO's purpose is to generate electricity and transmit it to distribution cooperatives that distribute it to end-use member-consumers in southern Arizona, western New Mexico, northwestern Arizona, and California. AEPCO provides wholesale energy and services to six distribution cooperatives through approximately 866 miles of wholly or partially owned transmission lines. AEPCO is owned, operated, and governed by its members who use the energy and services AEPCO provides. The member cooperatives to which AEPCO provides energy serve approximately 420,000 residential, agricultural, and industrial member-consumers. AEPCO is committed to balancing environmental stewardship with the cooperative's mission to provide reliable, affordable electricity to its members. AEPCO appreciates the Arizona Department of Environmental Quality's (ADEQ) past consideration of pricing to make the state program more affordable for a not-for-profit electric cooperative with cost-sensitive, rural end users.

AEPCO owns and operates Apache Generating Station (Apache), located in Cochise, Arizona, about 80 miles east of Tucson and about 25 miles northeast of Benson, Arizona. AEPCO

Arizona Electric Power Cooperative, Inc. • Sierra Southwest Cooperative Services, Inc.
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operates a Combustion Waste Disposal Facility (CWDF) at Apache, which consists of a multi-unit system of four CCR impoundments (Ash Ponds 1-4) and Scrubber Pond 2. Ash Ponds 1-4 and Scrubber Pond 2 are subject to the federal CCR Rule, 40 CFR Part 257 *et seq.* Two separate ponds, Scrubber Pond 1 and an Evaporation Pond are subject to the Arizona Aquifer Protection Permit (APP) Program and are not presently subject to the federal CCR Rule. Ash Ponds 1-4 and Scrubber Pond 2 would be subject to the Arizona CCR Program.

Comments on the Proposed Rule

I. AEPCO Supports Regulation of CCR Through a State Program.

AEPCO continues to support the development of an Arizona CCR Program. We acknowledge ADEQ's efforts to partner with the regulated community, public stakeholders, and U.S. EPA to develop the Program. AEPCO believes that a state program would be the most effective means to regulate CCR facilities in Arizona. Our state has the expertise and knowledge of the unique geologic and hydrology of the arid west. ADEQ has regulated Apache's CCR units and other CCR impoundments in the state for more than 30 years under the APP program. ADEQ is in the best position to navigate issues affecting the program such as declining groundwater levels, irrigation needs, and specialized features such as the Willcox Playa near Apache. Groundwater monitoring wells are often much deeper and may face operational issues due to declining groundwater levels. ADEQ has worked hand-in-hand with utilities to effectively and safely manage CCR. We believe the Arizona CCR Program is an opportunity to continue these collaborative efforts.

II. State Approvals of Certain CCR Activities May Unsettle CCR Rule Compliance.

AEPCO continues to have concerns regarding the implementation of ADEQ approvals of Alternate Source Demonstrations (ASDs). The Proposed Rule includes a process for preparing and submitting an ASD to ADEQ, with the potential for a state disapproval:

> If the owner or operator completes a successful demonstration, as supported by a certification from a qualified professional engineer, within the 90-day period, the owner or operator may continue with a detection monitoring program, **[unless such demonstration is subsequently disapproved by the Director**.] If a successful demonstration was not completed within the 90-day period [**or if the Director disapproves the demonstration**,] the owner or operator shall initiate an assessment monitoring program as required under § 257.95.[1]

At present, the federal ASD process is self-implementing. It does not require an approval by EPA or another party. Importantly, a valid ASD completely changes the course of source compliance. If an ASD is not in place within a defined time period, then a statistically significant

[1] 30 AZ Register, Iss. 28 at 2279, 2291 (discussing and citing R18-13-1005(C) (emphasis added)).

increase (SSI) will cause a transition into Assessment Monitoring. If ADEQ holds disapproval power over an ASD, a belated determination would cause disorder in the designed transitions within the groundwater monitoring and sampling program. ASDs may be "disapproved" at any point - even years after being finalized.

The Proposed Rule summary suggests that since a facility must provide ADEQ a notice within seven days of the decision to prepare an ASD, timing is not an issue for ADEQ to act quickly. 30 AZ Register, Iss. 28 at 2279. We acknowledge that prior notice may help ADEQ plan for a future ASD review; however, the notice would not provide the technical lines of evidence and data that ADEQ must vet. AEPCO does not believe that prior notice remedies its timing concern.

III. A Straightforward Appeal Process for ASDs Is Needed.

The Proposed Rule provides no clear path for appeals of ASDs. R18-13-1013 provides for appeals of a permitting decision. ASDs are not directly addressed. ADEQ should consider clarifying text to indicate that an ASD Disapproval is a final agency action subject to review immediately. A time frame for appeal should be offered, as well as an avenue to request the agency "stay" the ASD denial pending review. Since ASDs have immediate consequences, a clear process would benefit both the permittee and the agency.

IV. Permit Modifications are Unnecessary and Disruptive for Site Maintenance Activities.

AEPCO supports a permit modification program that addresses true programmatic changes. ADEQ and sources should focus resources on the essential compliance and monitoring elements for the CCR program. Routine maintenance and equipment changes should be excluded. AEPCO regularly inspects its regulated units and must swiftly correct any equipment deficiencies to stay on schedule for sampling events and regular inspection requirements. *See* 40 CFR § 257.94 (containing regular sampling requirements). In fact, the federal CCR Rule even imposes direct time pressure on AEPCO in some scenarios. *See, e.g.,* 40 CFR § 257.83(b)(5) ("If a deficiency or release is identified during an inspection, the owner or operator must remedy the deficiency or release *as soon as feasible* and prepare documentation detailing the corrective measures taken" (emphasis added)).

AEPCO continues to have concerns that the text of R18-13-1017(F) (Modification of a CCR Facility Permit) could be interpreted to have a wide-scope. That provision refers to "nonmajor alternations, additions, or changes in the operation or condition of the permitted facility" as minor permit modification. AEPCO specifically suggests revision of section 7 to clarify that pieces of equipment that make-up the monitoring well should not trigger a permit revision: "Replace monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness, **but not including routine maintenance or replacement of well components and related equipment**." R18-13-1017(F)(7) (bolded red font included suggested addition).

Repairs or replacements of normal "wear and tear" items, such as a bladder pump in a monitoring well or a water quality parameter instrument, like a portable pH meter, have no place in a permitting scheme. These items do not impact the core elements of the program. Facilities must have some leeway to expeditiously address routine equipment needs without implicating a permitting change.

V. Pre-State Permit Program Certifications Should Be Preserved.

AEPCO recommends that ADEQ clarify that pre-state program qualified professional engineer (QPE) certifications do not require state approvals. The Proposed Rule recognizes that QPE certifications are used extensively in CCR compliance. It was never AEPCO's understanding that the state program would be retroactive in scope. However, the preamble states that the rule will require "review and approval of those [QPE] certifications by ADEQ." 30 AZ Register, Iss. 28 at 2277. The self-implementing federal CCR program required AEPCO to undertake a substantial body of compliance work to set up the CCR program. Some of these activities began as early as 2015 – almost ten years ago. It would be counterproductive and time intensive for ADEQ and AEPCO to systematically revisit these certifications. It would upend the program. AEPCO requests that ADEQ clarify that ADEQ approvals shall be prospective only.

VI. Public Meeting Requirements Should be Revised.

AEPCO supports the engagement of local communities and stakeholders, although we request that ADEQ reconsider the timing and style of the public meeting in R18-13-1010(C). That regulation requires that the owner or operator of the facility hold a public meeting to inform the community about the permit before the application is submitted for an initial or renewed CCR facility permit. This timing is too early. AEPCO supports shifting the meeting to coincide with the public notice informing the public that the written application has been received by ADEQ. This delay would provide the following advantages: (1) the source and ADEQ will have more time to fully develop the application, work through terms and conditions of the proposed permit, and navigate site-specific issues; (2) the meeting will offer the public more robust content on which to provide feedback, after source and agency coordination; and (3) the public feedback will be more meaningful and applicable to the project at hand. Indeed, meeting before the project is fully defined is likely to create confusion for the community and generate feedback that may not be productive. In addition, AEPCO supports a meeting style in which the regulated entity and ADEQ present the application together. This is consistent with past practices in other permitting frameworks. In summary, AEPCO believes a shared meeting approach, after the permit application is submitted, will promote consistency and coordination between the agency, regulated entity, and the public.

Conclusion

AEPCO appreciates the opportunity to offer suggestions regarding the Arizona CCR Program. We look forward to further coordination and discussion with the agency. Please reach

out to Michelle Freeark at 520-586-5122 or mfreeark@azgt.coop if you have any questions or wish to discuss our recommendations further.

Sincerely,

Michelle R. Freeark
Executive Director of Regulatory Affairs & Corporate Services

Phil Smithers
Director of Environmental, Safety, HOP, & Industrial Hygiene

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400 North 5th Street
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August 13, 2024

Submitted Electronically

Arizona Department of Environmental Quality
Waste Programs Division, Solid Waste
Attn: Mark Lewandowski
1110 W. Washington Street
Phoenix, AZ 85007

Re: Comments on Proposed Rulemaking - Arizona Coal Combustion Residuals Rule

Dear Mr. Lewandowski:

Arizona Public Service Company ("APS") appreciates the opportunity to submit comments regarding the Arizona Department of Environmental Quality's (ADEQ's) Arizona Coal Combustion Residuals (CCR) Rule, specifically amendments to *Arizona Administrative Code (AAC) Title 18, Chapter 13, Article 10 (Coal Combustion Residuals) and Article 17 (Financial Assurance)* published in an Arizona Administrative Register Notice of Proposed Rulemaking dated July 12, 2024 (the Proposed Rules).

First and foremost, APS continues to be supportive of ADEQ's work towards an EPA-authorized CCR Program in Arizona as well as ADEQ's efforts to synchronize the future Arizona CCR program with the forthcoming federal CCR permit program.

Our remaining comment on the proposed rule is associated with the owner/operator-led public meeting held in advance of submitting an initial or renewal permit application per R18-13-1010.C. APS recommends that ADEQ lead public engagement to ensure that the content of public meetings aligns with the agency's requirements, promotes the community's engagement with an independent mediator in discussions, and allows the public to correspond directly with the authority responsible for regulating the subject compliance activities. Further, APS recommends that the meeting occur after preparation of the draft permit so that the public can be informed of and be provided the opportunity to comment in person on the controls proposed to ensure regulatory compliance.

If you have any questions or would like to discuss the information provided in more detail, please contact Natalie Chrisman Lazarr via email at natalie.chrismanlazarr@aps.com.

Thank you,

Phil Smithers
Director, Environmental, Safety, and HOP

cc: Anne Carlton, APS Environmental Support Manager
Jeffrey Allmon, Pinnacle West Senior Environmental Attorney

August 14, 2024

Mark Lewandowski
Arizona Department of Environmental Quality
Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007
By email: wasterulemaking@azdeq.gov and lewandowski.mark@azdeq.gov

Re: Notice of Rulemaking Docket Opening: 30 A.A.R. 2026, June 7, 2024- State's adoption of proposed coal combustion residuals regulations.

Mr. Lewandowski:

Sierra Club, Western Clean Energy Campaign are submitting these written comments in the above-referenced docket regarding the Arizona Department of Environmental Quality's (ADEQ) proposed adoption of state coal combustion residuals (CCR) regulations that would apply in lieu of the Environmental Protection Agency's (EPA) coal ash regulations at 40 C.F.R. 257, Subpart D, which was published in the Arizona Administrative Register on July 12, 2024, Vol. 30, Issue 28. Please accept the following comments with regard to the proposed state coal ash regulations.

As an overarching matter, ADEQ should not assert primacy over coal ash regulation and enforcement. The Arizona legislation authorizing adoption of coal ash regulations states that "[t]he director ***may*** adopt rules to establish and operate a coal combustion residuals program…" A.R.S. § 49-891(A). Adoption of such rules is discretionary, not mandatory.

ADEQ is already understaffed. Moreover, EPA has begun a significant effort to enforce the federal requirements found in 40 C.F.R. Part 257, Subpart D. To protect public health, ADEQ should abandon its effort to assume primacy over coal ash regulation and enforcement and leave the implementation and enforcement of the CCR program to the federal government.

We also offer the following additional comments.

1. The Legacy Rule amendments of May 8, 2024.

ADEQ's proposed state coal ash regulations state that the proposed rule "would incorporate EPA's 40 CFR 257, Subpart D, revised by EPA as of December 14, 2020." Ariz. Admin. Reg., Vol. 30, No. 28 at 2277. However, A.R.S. § 41-1028(B) requires that any Arizona regulation that incorporates by reference any federal regulation "shall state that the rule does not include any later amendments or editions of the incorporated matter."

On May 8, 2024, EPA amended 40 CFR 257, Subpart D by adopting the CCR "Legacy Rule," which regulates non-operating coal ash units that originally fell outside of the 2015 version of the Subpart D regulations. EPA's recent "Legacy Rule" can be found at 89 Fed. Reg. 38950 (May 8, 2024). The preamble to ADEQ's proposed regulations and the proposed regulations themselves are silent as to the existence of EPA's Legacy Rule. The proposed ADEQ regulations do not specifically state that the rule "does not include any later amendments or editions of the incorporated matter," which would include the Legacy Rule amendments. Although some of ADEQ's proposed regulations refer to Subpart D "as revised December 14, 2020 (and no future editions)," we ask that ADEQ specifically state that the proposed CCR regulations do *not* include matters covered by EPA's 2024 CCR Legacy Rule amendments to Subpart D.

Earthjustice has identified at least two coal ash units in Arizona that may be subject to the CCR Legacy Rule.[1] These coal units appear to be coal ash landfills both located on the Coronado power plant site. Because Arizona's proposed regulations would not incorporate EPA revisions to Subpart D

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[1] Earthjustice, Toxic Coal Ash in Arizona: Addressing Coal Plants' Hazardous Legacy (May 3, 2023), available at https://earthjustice.org/feature/coal-ash-states/arizona#unregulated.

after December 14, 2020, it appears Arizona is not seeking to regulate any legacy units and instead such units would remain regulated by EPA's Subpart D regulations. Please confirm that any "legacy units" in Arizona would remain regulated by EPA under the newly revised Subpart D.

2. Un-approvable provisions less stringent than Subpart D.

In several respects, ADEQ's proposed regulations are less stringent than the December 14, 2020 version of Subpart D and thus cannot be approved by EPA. For example, ADEQ's proposed regulations would amend 40 C.F.R. 257.73(a)(4), 40 C.F.R. 257.73 (d)(1)(iv), 40 C.F.R. 257.74(a)(4), and 40 C.F.R 257.74(d)(1)(iv) by deleting the words "not to exceed a height of 6 inches above the slope of the dike." The deletion of this language makes the proposed rule less stringent than the federal rule with regard to structural integrity requirements for existing and lateral expansions of CCR surface impoundments. Because the proposed language is less stringent, it is not approvable by EPA. In the event ADEQ proceeds to promulgate these regulations, please revise the regulations to fully incorporate all requirements of 40 C.F.R. 257.73 and 257.74.

3. The definition of "minor modification" is overly broad.

Section R18-13-1017 F. of the proposed regulations contains an overly broad definition of "minor permit modification" that would deny the public the opportunity to comment on and appeal important changes to a CCR permit. For example, the following significant permit modifications would be considered "minor" under the proposed regulations: changes to Aquifer Water Quality Standards or Maximum Contaminant Levels "which serve as the underlying basis for a permit condition"; changes in the statistical method for evaluating groundwater monitoring data; changes to groundwater sampling and analysis frequency; assessment of corrective measures; changes to approved groundwater monitoring systems; changes to interim or final compliance dates; making "material changes to the corrective action requirements"; and modification of a CCR unit "including physical changes."

By their very definition, these modifications are "material," "major," and/or "serve as the underlying basis for a permit condition." As such, the type of permit modifications identified above must be considered "major modifications" of a CCR permit requiring public notice, public comment, and an opportunity for public challenge.

Finally, in an early budget request for running the program and prior to passage of the authorizing legislation, ADEQ indicated that it hoped to avoid the citizen suit provisions of the Resource Conservation and Recovery Act (RCRA) by assuming control of the program.[2] While ADEQ later backed off on that statement and modified its request, we remain concerned, as Arizona's citizen enforcement provisions (*see* A.R.S. § 49-264) are so weak that they are almost never used. Arizona's citizen enforcement provisions allow the director of ADEQ to prevent a citizen suit from moving forward merely by asserting that no violation occurred. If ADEQ's proposed regulations are finalized, the rules should clarify that the citizen enforcement provisions of RCRA apply to the CCR program. The current lack of clarity about citizen enforcement is one of the reasons we oppose state primacy over the CCR program.

Thank you for the opportunity to comment on these proposed regulations.

Sincerely,

Sandy Bahr
Director
Sierra Club – Grand Canyon Chapter

Eric Frankowski
Executive Director
Western Clean Energy Campaign

Vianey Olivarria
Executive Director
Chispa Arizona

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[2] https://www.azcentral.com/story/news/politics/arizona/2021/10/27/arizona-utilities-seek-state-oversight-coal-ash-pollution-disposal/8379404002/

Joseph City Schools
Tradition of Excellence

Bryan Fields
Superintendent

August 14, 2024

Mark Lewandowski
Arizona Department of Environmental Quality
Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007
wasterulemaking@azdeq.gov

RE: State's adoption of proposed coal combustion residuals regulations
Notice of Rulemaking Docket Opening: 30 A.A.R. 2026, June 7, 2024

Mr. Lewandowski,

It has come to our attention that the Arizona Department of Environmental Quality (ADEQ) is proposing to take over responsibility for the state of Arizona for Coal Combustion Residual (CCR) regulation, rather than maintaining the current practice of the U.S. Environmental Protection Agency (EPA). As you know, EPA is the regulatory agency responsible for ensuring compliance by utilities, and our community is very supportive of continuing to ensure the level of protection EPA regulations provide to our community's safety and health.

Joseph City is considered a Coal Impacted Community as the Cholla Power Plant, and its attendant ponds and coal ash pits are located within two miles from our community border (Figure 1). While the Cholla Power Plant will close in 2025, the CCR or ash will remain in our community forever with the potential to expose our citizens to airborne toxins and water pollutants without adequate monitoring and protections in place.

Therefore, it is in the best interests of our community, its children and citizens that the strongest possible CCR regulations are implemented. Continual, robust monitoring of the ash pond in perpetuity will be necessary to ensure containment issues are not developing for these waste products. For these reasons, we ask that the state not take over the CCR program unless it can assure citizens of this state that Arizona compliance regulations will not be weaker or more permissible in any respect than current federal regulation.

As the ADEQ has historically not had responsibility for designing, implementing and enforcing a CCR program to date, we are concerned that the state may not have the staffing and expertise comparable to the experience and resources of the federal EPA. In addition, the state experiences budget deficits in many years, resulting in budget cuts to state agencies. Given this, how can the ADEQ ensure that adequate funding will be available to administer this program?

Figure 1. Joseph City (dotted line) and Coal Ash Pond (red circle) Geographic Boundaries

We also believe that members of the community should have the right and ability to seek legal remedies if situations arise where utilities are not complying with established regulations. According to a 2021 *Arizona Republic* news article,[1] when the change from federal to state jurisdiction for coal ash laws was first requested by utilities, a provision to allow for citizen lawsuits was not included. As we don't know what may happen in the future with such a significant waste site, it is imperative that the State of Arizona and ADEQ provide an effective and efficient process for citizen concerns to be addressed through a comprehensive and thorough review.

Joseph City and surrounding communities are working to address the impacts of losing the Cholla Power Plant, a significant, regional employer. Economic redevelopment and attraction of new industries and families will be impacted if enforcement of CCR becomes lax or if pollution is allowed to migrate from the site. Our communities have provided the land, water and labor that

[1] State regulators want to run coal ash program after ask from utilities (azcentral.com)

provided electricity to the state for decades. In return, we are due the strongest possible CCR regulation to protect the health and prosperity of our families.

Thank you for considering these comments.

Regards,

Bryan Fields

Bryan Fields
Superintendent
Joseph City Unified School District

Andrea Martinez, Senior Manager
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Transmitted via electronic mail

Mr. Mark Lewandowski
Waste Programs Division
Arizona Department Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

August 14, 2024

RE: SRP Comments on ADEQ's Proposed Rulemaking to Establish and Operate a Coal Combustion Residuals Permitting Program for Arizona

Dear Mark Lewandowski,

Salt River Project Agricultural Improvement and Power District (SRP) owns and operates the Coronado Generating Station (CGS), which has three Coal Combustion Residuals (CCR) units covered by the requirements of the U.S Environmental Protection Agency's 2015 CCR rule. The units include an active surface impoundment (Evaporation Pond), an active dry landfill (Ash Disposal Landfill), and a closed surface impoundment (Ash Slurry Settling Ponds). SRP completed closure of the Ash Slurry Settling Ponds in accordance with the CCR rule and Aquifer Protection Permit (APP) program requirements on April 29, 2019. SRP appreciates the opportunity to provide comments on the Arizona Department of Environmental Quality (ADEQ) draft CCR rule language and appreciates the work conducted by the agency to support this rulemaking. This rulemaking will allow ADEQ to establish and operate a CCR permitting program for Arizona. SRP previously submitted comments on draft rule language via ADEQ's comment portal on January 30, 2024. SRP has also reviewed the current rule language dated July 12, 2024, and SRP respectfully offers the following comments.

Permit Application Requirements for CCR Facilities

Section R18-13-1010.B.2 of the draft rule requires submittal of an application for a new CCR unit or lateral expansion of a CCR unit and issuance of a permit (or permit modification) authorizing construction before construction may begin. SRP requests that ADEQ revise this section to allow construction of proposed facilities to proceed at risk while a facility goes through a new facility permitting process. This practice aligns with the agency's APP program regulations and allows companies to proceed with developing new capacity in a shorter time period when needed.

Section R18-13-1010.C of the draft rule requires the owner or operator to hold a public meeting to solicit questions from the community and inform the community of a proposed permit application *prior to* submitting an application for an initial or renewed CCR facility permit. Additionally, the owner or operator must notify ADEQ of this meeting at least 30 days prior to the pre-application public meeting, provide "adequate" public notice for the meeting and submit a summary of the meeting including a list of attendees and any voluntarily submitted addresses to the Department.

SRP supports public participation in the permitting process, however, ADEQ has not provided the legal basis for these requirements, which impose a new regulatory burden on permittees. As ADEQ is aware, CCR permits will only be issued at long-existing facilities that have been under ADEQ oversight for many years. These proposed and novel requirements in section R18-13-1010.C for public involvement before formal agency engagement go beyond the federal regulations applicable to CCR units. In addition, the requirements are a marked departure from the public involvement requirements under other programs administered by ADEQ.

The requirements in R18-13-1010.C also have the potential to create confusion for the public. Public involvement is required when the *agency* proposes to take an action, not an applicant. It is not until an applicant has engaged ADEQ in the pre-application process that ADEQ defines the project permit and facility requirements. Engaging the public before a project is fully defined may cause confusion and extend permitting timelines.

SRP also notes that the draft rule includes opportunities for public participation that will better serve the public through its requirements to share information *after* a project has been defined by ADEQ. Indeed, section R18-13-1018 addressing "Public Notice Requirements for Permit Actions" requires ADEQ to provide public notice of initial or renewed CCR permit applications as well as applications to modify such permits (R18-13-1018.A). For initial or renewed CCR permits and major modifications, ADEQ must provide a notice that: (1) includes a brief summary of the draft document; (2) provides information about the licensing timeframes and explains where further information on the permit action can be obtained; (3) describes when and how comments may be made; (4) provides at least 30 days for comments; and (5) explains how a public hearing may be requested (A.A.C. R18-13-1018.E). In addition, the public may request additional time to comment on a draft permit. These provisions provide ample opportunities for participation for the public, and the additional requirements in section R18-13-1010.C are unwarranted. SRP requests that section R18-13-1010.C be removed.

Modification of a CCR Facility Permit

Section 8-13-1017.F.3.c requires a minor permit modification when there is a change to a groundwater sampling and analysis program, including a demonstration of an alternative source of a statistically significant increase (SSI) over background levels for a groundwater constituent per 40 CFR 257.94(d) or 257.95(c). Alternate source demonstrations (ASDs) for SSIs pertaining to naturally occurring conditions should not require a minor permit modification, as this type of ASD does not lead to a change in a facility's groundwater sampling and analysis program (i.e., the facility remains in detection monitoring, rather than commencing assessment monitoring). SRP requests this requirement be removed.

SRP appreciates the opportunity to provide these comments to ADEQ. If you have any questions, please call or e-mail me at the contact information listed above.

Sincerely,

Andrea Martinez

cc: Kara Montalvo, SRP

Tucson Electric Power
88 East Broadway Blvd (85701)
Mail Stop HQE901, Post Office Box 711
Tucson, Arizona 85702

Telephone (520) 549-8640
Email: megan.garvey@tep.com

Submitted via email to wasterulemaking@azdeq.gov

August 14, 2024

ADEQ
Waste Programs Division, Solid Waste
Attn: Mark Lewandowski
1110 W. Washington Street
Phoenix, AZ 85007

RE: Proposed Rulemaking – Coal Combustion Residuals Program

Tucson Electric Power Company (TEP or the Company) respectfully submits these comments to the Arizona Department of Environmental Quality (ADEQ or Agency) regarding the Proposed Rulemaking – Coal Combustion Residuals (CCR) Program published in the Arizona Administrative Register on July 12, 2024 (Program or Proposed Rule).

TEP appreciates and supports ADEQ's efforts to develop Arizona-specific regulations regarding CCR management and the development of a state CCR permitting program. The Proposed Rule maintains the requirements of the self-implementing federal CCR rule while additionally incorporating components of the Aquifer Protection Program (APP) that currently apply to our CCR unit at the Springerville Generating Station. This Proposed Rule will allow for a streamlined, singular permit program for our CCR unit that meets all applicable federal and state requirements for CCR management and aquifer protection. TEP recognizes that your extensive knowledge of the unique geologic and hydrogeologic site conditions across Arizona make ADEQ the appropriate regulatory agency to implement the CCR Program. We are grateful for the stakeholder process ADEQ facilitated over the past few years. Thank you for devoting time and resources to the development of this Program.

Engagement in our communities and with our customers is a TEP priority. We are pleased that ADEQ's proposed rulemaking is designed to provide ample opportunities for public participation during the permitting process. We agree that community awareness and participation in the CCR permitting process is important.

Stakeholder engagement is most meaningful when it is informed and timely. The proposed Public Notice Requirements under R18-13-1018 allow for meaningful public participation

in the CCR permitting process through public notices, making application materials available to the public, and allowing for optional public meetings. TEP recommends that the proposed requirement under R18-13-1010.C, for a public meeting without ADEQ's involvement and prior to submitting a permit application, be moved to R18-13-1018.A to coincide with the public notice that an application has been received by ADEQ. TEP also proposes that both the applicant and ADEQ participate in the public meeting.

Moving the public meeting requirements from R18-13-1010.C to R18-13-1018.A will benefit all stakeholders. The community will be better informed of the permit application and permitting process after an application package has been submitted. This timing will provide ample opportunity for community feedback prior to the development of the draft permit.

As noted in R18-13-1018.F, ADEQ will also have the option to schedule a public hearing after public notice of a proposed draft permit "if requested and if the Director determines there is sufficient public interest." This will provide additional opportunities for public hearings, if requested by the community.

Thank you, again, for the opportunity to provide feedback on the Proposed Rule. Please let me know if you have any questions. We look forward to working with you under this Program.

Sincerely,

Megan E. Garvey
Sr. Director, Environmental Services and Sustainability
Tucson Electric Power Company

cc:
Erik Bakken, TEP
Gregory Guimond, TEP
Bradley S. Carroll, TEP
Steven Estes, TEP

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Director of an approved State the following information as it becomes available:

(1) Any location restriction demonstration required under §§ 257.7 through 257.12; and

(2) Any demonstration, certification, finding, monitoring, testing, or analytical data required in §§ 257.21 through 257.28.

(b) The owner/operator must notify the State Director when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be furnished upon request to the State Director or be made available at all reasonable times for inspection by the State Director.

(c) The Director of an approved State can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (a) and (b) of this section, except for the notification requirements in § 257.25(g)(1)(iii).

(d) The Director of an approved state program may receive electronic documents only if the state program includes the requirements of 40 CFR Part 3—(Electronic reporting).

[44 FR 53460, Sept. 13, 1979, as amended at 70 FR 59888, Oct. 13, 2005]

Subpart C [Reserved]

Subpart D—Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments

SOURCE: 80 FR 21468, Apr. 17, 2015, unless otherwise noted.

§ 257.50 Scope and purpose.

(a) This subpart establishes minimum national criteria for purposes of determining which solid waste disposal facilities and solid waste management practices do not pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act.

(b) This subpart applies to owners and operators of new and existing landfills and surface impoundments, including any lateral expansions of such units that dispose or otherwise engage in solid waste management of CCR generated from the combustion of coal at electric utilities and independent power producers. Unless otherwise provided in this subpart, these requirements also apply to disposal units located off-site of the electric utility or independent power producer. This subpart also applies to any practice that does not meet the definition of a beneficial use of CCR.

(c) This subpart also applies to inactive CCR surface impoundments at active electric utilities or independent power producers, regardless of the fuel currently used at the facility to produce electricity.

(d) This subpart does not apply to CCR landfills that have ceased receiving CCR prior to October 19, 2015.

(e) This subpart does not apply to electric utilities or independent power producers that have ceased producing electricity prior to October 19, 2015.

(f) This subpart does not apply to wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals. This subpart also does not apply to fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels (including other fossil fuels) other than coal, for the purpose of generating electricity unless the fuel burned consists of more than fifty percent (50%) coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal.

(g) This subpart does not apply to practices that meet the definition of a beneficial use of CCR.

(h) This subpart does not apply to CCR placement at active or abandoned underground or surface coal mines.

(i) This subpart does not apply to municipal solid waste landfills that receive CCR.

§ 257.51 Effective date of this subpart.

The requirements of this subpart take effect on October 19, 2015.

§ 257.52 Applicability of other regulations.

(a) Compliance with the requirements of this subpart does not affect the need for the owner or operator of a CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit to comply with all other applicable federal, state, tribal, or local laws or other requirements.

(b) Any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit continues to be subject to the requirements in §§ 257.3–1, 257.3–2, and 257.3–3.

§ 257.53 Definitions.

The following definitions apply to this subpart. Terms not defined in this section have the meaning given by RCRA.

Acre foot means the volume of one acre of surface area to a depth of one foot.

Active facility or *active electric utilities or independent power producers* means any facility subject to the requirements of this subpart that is in operation on October 19, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 19, 2015. An off-site disposal facility is in operation if it is accepting or managing CCR on or after October 19, 2015.

Active life or *in operation* means the period of operation beginning with the initial placement of CCR in the CCR unit and ending at completion of closure activities in accordance with § 257.102.

Active portion means that part of the CCR unit that has received or is receiving CCR or non-CCR waste and that has not completed closure in accordance with § 257.102.

Aquifer means a geologic formation, group of formations, or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.

Area-capacity curves means graphic curves which readily show the reservoir water surface area, in acres, at different elevations from the bottom of the reservoir to the maximum water surface, and the capacity or volume, in acre-feet, of the water contained in the reservoir at various elevations.

Areas susceptible to mass movement means those areas of influence (*i.e.*, areas characterized as having an active or substantial possibility of mass movement) where, because of natural or human-induced events, the movement of earthen material at, beneath, or adjacent to the CCR unit results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

Beneficial use of CCR means the CCR meet all of the following conditions:

(1) The CCR must provide a functional benefit;

(2) The CCR must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;

(3) The use of the CCR must meet relevant product specifications, regulatory standards or design standards when available, and when such standards are not available, the CCR is not used in excess quantities; and

(4) When unencapsulated use of CCR involving placement on the land of 12,400 tons or more in non-roadway applications, the user must demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

Closed means placement of CCR in a CCR unit has ceased, and the owner or operator has completed closure of the CCR unit in accordance with § 257.102 and has initiated post-closure care in accordance with § 257.104.

Coal combustion residuals (CCR) means fly ash, bottom ash, boiler slag, and

flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

CCR fugitive dust means solid airborne particulate matter that contains or is derived from CCR, emitted from any source other than a stack or chimney.

CCR landfill or landfill means an area of land or an excavation that receives CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of this subpart, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.

CCR pile or pile means any non-containerized accumulation of solid, nonflowing CCR that is placed on the land. CCR that is beneficially used off-site is not a CCR pile.

CCR surface impoundment or impoundment means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

CCR unit means any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units, based on the context of the paragraph(s) in which it is used. This term includes both new and existing units, unless otherwise specified.

Dike means an embankment, berm, or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

Displacement means the relative movement of any two sides of a fault measured in any direction.

Disposal means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste as defined in section 1004(27) of the Resource Conservation and Recovery Act into or on any land or water so that such solid waste, or constituent thereof, may enter the environment or be emitted into the air or discharged into any waters, including groundwaters. For purposes of this subpart, disposal does not include the storage or the beneficial use of CCR.

Downstream toe means the junction of the downstream slope or face of the CCR surface impoundment with the ground surface.

Eligible unlined CCR surface impoundment means an existing CCR surface impoundment that meets all of the following conditions:

(1) The owner or operator has documented that the CCR unit is in compliance with the location restrictions specified under §§ 257.60 through 257.64;

(2) The owner or operator has documented that the CCR unit is in compliance with the periodic safety factor assessment requirements under § 257.73(e) and (f); and

(3) No constituent listed in Appendix IV to this part has been detected at a statistically significant level exceeding a groundwater protection standard defined under § 257.95(h).

Encapsulated beneficial use means a beneficial use of CCR that binds the CCR into a solid matrix that minimizes its mobilization into the surrounding environment.

Existing CCR landfill means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015 and receives CCR on or after October 19, 2015. A CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 19, 2015.

Existing CCR surface impoundment means a CCR surface impoundment that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015 and receives CCR on or after October 19, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 19, 2015.

Facility means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, disposing, or otherwise conducting solid waste management of CCR. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

Factor of safety (Safety factor) means the ratio of the forces tending to resist the failure of a structure to the forces tending to cause such failure as determined by accepted engineering practice.

Fault means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

Flood hydrograph means a graph showing, for a given point on a stream, the discharge, height, or other characteristic of a flood as a function of time.

Freeboard means the vertical distance between the lowest point on the crest of the impoundment dike and the surface of the waste contained therein.

Free liquids means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure.

Groundwater means water below the land surface in a zone of saturation.

Hazard potential classification means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the diked CCR surface impoundment or mis-operation of the diked CCR surface impoundment or its appurtenances. The hazardous potential classifications include high hazard potential CCR surface impoundment, significant hazard potential CCR surface impoundment, and low hazard potential CCR surface impoundment, which terms mean:

(1) *High hazard potential CCR surface impoundment* means a diked surface impoundment where failure or mis-operation will probably cause loss of human life.

(2) *Low hazard potential CCR surface impoundment* means a diked surface impoundment where failure or mis-operation results in no probable loss of human life and low economic and/or environmental losses. Losses are principally limited to the surface impoundment owner's property.

(3) *Significant hazard potential CCR surface impoundment* means a diked surface impoundment where failure or mis-operation results in no probable loss of human life, but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.

Height means the vertical measurement from the downstream toe of the CCR surface impoundment at its lowest point to the lowest elevation of the crest of the CCR surface impoundment.

Holocene means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch, at 11,700 years before present, to present.

Hydraulic conductivity means the rate at which water can move through a permeable medium (*i.e.*, the coefficient of permeability).

Inactive CCR surface impoundment means a CCR surface impoundment that no longer receives CCR on or after October 19, 2015 and still contains both CCR and liquids on or after October 19, 2015.

Incised CCR surface impoundment means a CCR surface impoundment which is constructed by excavating entirely below the natural ground surface, holds an accumulation of CCR entirely below the adjacent natural ground surface, and does not consist of any constructed diked portion.

Indian country or *Indian lands* means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

Indian Tribe or *Tribe* means any Indian tribe, band, nation, or community

recognized by the Secretary of the Interior and exercising substantial governmental duties and powers on Indian lands.

Inflow design flood means the flood hydrograph that is used in the design or modification of the CCR surface impoundments and its appurtenant works.

In operation means the same as *active life*.

Karst terrain means an area where karst topography, with its characteristic erosional surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, dolines, collapse shafts (sinkholes), sinking streams, caves, seeps, large springs, and blind valleys.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing CCR landfill or existing CCR surface impoundment made after October 19, 2015.

Liquefaction factor of safety means the factor of safety (safety factor) determined using analysis under liquefaction conditions.

Lithified earth material means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

Maximum horizontal acceleration in lithified earth material means the maximum expected horizontal acceleration at the ground surface as depicted on a seismic hazard map, with a 98% or greater probability that the acceleration will not be exceeded in 50 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

New CCR landfill means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 19, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 19, 2015. Overfills are also considered new CCR landfills.

New CCR surface impoundment means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 19, 2015.

Nonparticipating State means a State—

(1) For which the Administrator has not approved a State permit program or other system of prior approval and conditions under RCRA section 4005(d)(1)(B);

(2) The Governor of which has not submitted to the Administrator for approval evidence to operate a State permit program or other system of prior approval and conditions under RCRA section 4005(d)(1)(A);

(3) The Governor of which provides notice to the Administrator that, not fewer than 90 days after the date on which the Governor provides the notice to the Administrator, the State will relinquish an approval under RCRA section 4005(d)(1)(B) to operate a permit program or other system of prior approval and conditions; or

(4) For which the Administrator has withdrawn approval for a permit program or other system of prior approval and conditions under RCRA section 4005(d)(1)(E).

Operator means the person(s) responsible for the overall operation of a CCR unit.

Overfill means a new CCR landfill constructed over a closed CCR surface impoundment.

Owner means the person(s) who owns a CCR unit or part of a CCR unit.

Participating State means a state with a state program for control of CCR

that has been approved pursuant to RCRA section 4005(d).

Participating State Director means the chief administrative officer of any state agency operating the CCR permit program in a participating state or the delegated representative of the Participating State Director. If responsibility is divided among two or more state agencies, Participating State Director means the chief administrative officer of the state agency authorized to perform the particular function or procedure to which reference is made.

Poor foundation conditions mean those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of an existing or new CCR unit. For example, failure to maintain static and seismic factors of safety as required in §§ 257.73(e) and 257.74(e) would cause a poor foundation condition.

Probable maximum flood means the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the drainage basin.

Qualified person means a person or persons trained to recognize specific appearances of structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit by visual observation and, if applicable, to monitor instrumentation.

Qualified professional engineer means an individual who is licensed by a state as a Professional Engineer to practice one or more disciplines of engineering and who is qualified by education, technical knowledge and experience to make the specific technical certifications required under this subpart. Professional engineers making these certifications must be currently licensed in the state where the CCR unit(s) is located.

Recognized and generally accepted good engineering practices means engineering maintenance or operation activities based on established codes, widely accepted standards, published technical reports, or a practice widely recommended throughout the industry. Such practices generally detail approved ways to perform specific engineering, inspection, or mechanical integrity activities.

Retrofit means to remove all CCR and contaminated soils and sediments from the CCR surface impoundment, and to ensure the unit complies with the requirements in § 257.72

Representative sample means a sample of a universe or whole (e.g., waste pile, lagoon, and groundwater) which can be expected to exhibit the average properties of the universe or whole. See EPA publication SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Chapter 9 (available at *http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm*) for a discussion and examples of representative samples.

Run-off means any rainwater, leachate, or other liquid that drains over land from any part of a CCR landfill or lateral expansion of a CCR landfill.

Run-on means any rainwater, leachate, or other liquid that drains over land onto any part of a CCR landfill or lateral expansion of a CCR landfill.

Sand and gravel pit or quarry means an excavation for the extraction of aggregate, minerals or metals. The term sand and gravel pit and/or quarry does not include subsurface or surface coal mines.

Seismic factor of safety means the factor of safety (safety factor) determined using analysis under earthquake conditions using the peak ground acceleration for a seismic event with a 2% probability of exceedance in 50 years, equivalent to a return period of approximately 2,500 years, based on the U.S. Geological Survey (USGS) seismic hazard maps for seismic events with this return period for the region where the CCR surface impoundment is located.

Seismic impact zone means an area having a 2% or greater probability that the maximum expected horizontal acceleration, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10 g in 50 years.

Slope protection means engineered or non-engineered measures installed on the upstream or downstream slope of the CCR surface impoundment to protect the slope against wave action or erosion, including but not limited to rock riprap, wooden pile, or concrete

revetments, vegetated wave berms, concrete facing, gabions, geotextiles, or fascines.

Solid waste management or management means the systematic administration of the activities which provide for the collection, source separation, storage, transportation, processing, treatment, or disposal of solid waste.

State means any of the fifty States in addition to the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Director means the chief administrative officer of the lead state agency responsible for implementing the state program regulating disposal in CCR landfills, CCR surface impoundments, and all lateral expansions of a CCR unit.

Static factor of safety means the factor of safety (safety factor) determined using analysis under the long-term, maximum storage pool loading condition, the maximum surcharge pool loading condition, and under the end-of-construction loading condition.

Structural components mean liners, leachate collection and removal systems, final covers, run-on and run-off systems, inflow design flood control systems, and any other component used in the construction and operation of the CCR unit that is necessary to ensure the integrity of the unit and that the contents of the unit are not released into the environment.

Technically feasible means possible to do in a way that would likely be successful.

Technically infeasible means not possible to do in a way that would likely be successful.

Unstable area means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity, including structural components of some or all of the CCR unit that are responsible for preventing releases from such unit. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary. Upper limit is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.

Waste boundary means a vertical surface located at the hydraulically downgradient limit of the CCR unit. The vertical surface extends down into the uppermost aquifer.

[80 FR 21468, Apr. 17, 2015, as amended at 80 FR 37991, July 2, 2015; 83 FR 36451, July 30, 2018; 85 FR 53561, Aug. 28, 2020]

LOCATION RESTRICTIONS

§ 257.60 Placement above the uppermost aquifer.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must be constructed with a base that is located no less than 1.52 meters (five feet) above the upper limit of the uppermost aquifer, or must demonstrate that there will not be an intermittent, recurring, or sustained hydraulic connection between any portion of the base of the CCR unit and the uppermost aquifer due to normal fluctuations in groundwater elevations (including the seasonal high water table). The owner or operator must demonstrate by the dates specified in paragraph (c) of this section that the CCR unit meets the minimum requirements for placement above the uppermost aquifer.

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

(c) The owner or operator of the CCR unit must complete the demonstration required by paragraph (a) of this section by the date specified in either paragraph (c)(1) or (2) of this section.

(1) For an existing CCR surface impoundment, the owner or operator must complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or

operator must complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by paragraph (a) of this section when the demonstration is placed in the facility's operating record as required by § 257.105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of paragraph (a) of this section by the date specified in paragraph (c)(1) of this section is subject to the requirements of § 257.101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of paragraph (a) of this section is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(e), the notification requirements specified in § 257.106(e), and the internet requirements specified in § 257.107(e).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

§ 257.61 Wetlands.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located in wetlands, as defined in § 232.2 of this chapter, unless the owner or operator demonstrates by the dates specified in paragraph (c) of this section that the CCR unit meets the requirements of paragraphs (a)(1) through (5) of this section.

(1) Where applicable under section 404 of the Clean Water Act or applicable state wetlands laws, a clear and objective rebuttal of the presumption that an alternative to the CCR unit is reasonably available that does not involve wetlands.

(2) The construction and operation of the CCR unit will not cause or contribute to any of the following:

(i) A violation of any applicable state or federal water quality standard;

(ii) A violation of any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act;

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(iv) A violation of any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary.

(3) The CCR unit will not cause or contribute to significant degradation of wetlands by addressing all of the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the CCR unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the CCR unit;

(iii) The volume and chemical nature of the CCR;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of CCR;

(v) The potential effects of catastrophic release of CCR to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent reasonable as required by paragraphs (a)(1) through (3) of this section, then minimizing unavoidable impacts to the maximum extent reasonable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and reasonable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasoned determination with respect to the demonstrations in paragraphs (a)(1) through (4) of this section.

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

(c) The owner or operator of the CCR unit must complete the demonstrations required by paragraph (a) of this section by the date specified in either paragraph (c)(1) or (2) of this section.

(1) For an existing CCR surface impoundment, the owner or operator must complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator must complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by paragraph (a) of this section when the demonstration is placed in the facility's operating record as required by § 257.105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of paragraph (a) of this section by the date specified in paragraph (c)(1) of this section is subject to the requirements of § 257.101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstrations showing compliance with the requirements of paragraph (a) of this section is prohibited from placing CCR in the CCR unit.

(d) The owner or operator must comply with the recordkeeping requirements specified in § 257.105(e), the notification requirements specified in § 257.106(e), and the Internet requirements specified in § 257.107(e).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

§ 257.62 Fault areas.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located within 60 meters (200 feet) of the outermost damage zone of a fault that has had displacement in Holocene time unless the owner or operator demonstrates by the dates specified in paragraph (c) of this section that an alternative setback distance of less than 60 meters (200 feet) will prevent damage to the structural integrity of the CCR unit.

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

(c) The owner or operator of the CCR unit must complete the demonstration required by paragraph (a) of this section by the date specified in either paragraph (c)(1) or (2) of this section.

(1) For an existing CCR surface impoundment, the owner or operator must complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator must complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by paragraph (a) of this section when the demonstration is placed in the facility's operating record as required by § 257.105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of paragraph (a) of this section by the date specified in paragraph (c)(1) of this section is subject to the requirements of § 257.101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of paragraph (a) of this section is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in

§ 257.105(e), the notification requirements specified in § 257.106(e), and the Internet requirements specified in § 257.107(e).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

§ 257.63 Seismic impact zones.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located in seismic impact zones unless the owner or operator demonstrates by the dates specified in paragraph (c) of this section that all structural components including liners, leachate collection and removal systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

(c) The owner or operator of the CCR unit must complete the demonstration required by paragraph (a) of this section by the date specified in either paragraph (c)(1) or (2) of this section.

(1) For an existing CCR surface impoundment, the owner or operator must complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator must complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by paragraph (a) of this section when the demonstration is placed in the facility's operating record as required by § 257.105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of paragraph (a) of this section by the date specified in paragraph (c)(1) of this section is subject to the requirements of § 257.101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of paragraph (a) of this section is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(e), the notification requirements specified in § 257.106(e), and the Internet requirements specified in § 257.107(e).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

§ 257.64 Unstable areas.

(a) An existing or new CCR landfill, existing or new CCR surface impoundment, or any lateral expansion of a CCR unit must not be located in an unstable area unless the owner or operator demonstrates by the dates specified in paragraph (d) of this section that recognized and generally accepted good engineering practices have been incorporated into the design of the CCR unit to ensure that the integrity of the structural components of the CCR unit will not be disrupted.

(b) The owner or operator must consider all of the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or events (both surface and subsurface).

(c) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

(d) The owner or operator of the CCR unit must complete the demonstration required by paragraph (a) of this section by the date specified in either paragraph (d)(1) or (2) of this section.

(1) For an existing CCR landfill or existing CCR surface impoundment, the owner or operator must complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator must complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by paragraph (a) of this section when the demonstration is placed in the facility's operating record as required by § 257.105(e).

(4) An owner or operator of an existing CCR surface impoundment or existing CCR landfill who fails to demonstrate compliance with the requirements of paragraph (a) of this section by the date specified in paragraph (d)(1) of this section is subject to the requirements of § 257.101(b)(1) or (d)(1), respectively.

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of paragraph (a) of this section is prohibited from placing CCR in the CCR unit.

(e) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(e), the notification requirements specified in § 257.106(e), and the Internet requirements specified in § 257.107(e).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

DESIGN CRITERIA

§ 257.70 Design criteria for new CCR landfills and any lateral expansion of a CCR landfill.

(a)(1) New CCR landfills and any lateral expansion of a CCR landfill must be designed, constructed, operated, and maintained with either a composite liner that meets the requirements of paragraph (b) of this section or an alternative composite liner that meets the requirements in paragraph (c) of this section, and a leachate collection and removal system that meets the requirements of paragraph (d) of this section.

(2) Prior to construction of an overfill the underlying surface impoundment must meet the requirements of § 257.102(d).

(b) A *composite liner* must consist of two components; the upper component consisting of, at a minimum, a 30-mil geomembrane liner (GM), and the lower component consisting of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second (cm/sec). GM components consisting of high density polyethylene (HDPE) must be at least 60-mil thick. The GM or upper liner component must be installed in direct and uniform contact with the compacted soil or lower liner component. The composite liner must be:

(1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the CCR or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) Constructed of materials that provide appropriate shear resistance of the upper and lower component interface to prevent sliding of the upper component including on slopes;

(3) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(4) Installed to cover all surrounding earth likely to be in contact with the CCR or leachate.

(c) If the owner or operator elects to install an alternative composite liner, all of the following requirements must be met:

(1) An *alternative composite liner* must consist of two components; the upper component consisting of, at a minimum, a 30-mil GM, and a lower component, that is not a geomembrane, with a liquid flow rate no greater than the liquid flow rate of two feet of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

GM components consisting of high density polyethylene (HDPE) must be at least 60-mil thick. If the lower component of the alternative liner is compacted soil, the GM must be installed in direct and uniform contact with the compacted soil.

(2) The owner or operator must obtain certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the liquid flow rate through the lower component of the alternative composite liner is no greater than the liquid flow rate through two feet of compacted soil with a hydraulic conductivity of $1x10^{-7}$ cm/sec. The hydraulic conductivity for the two feet of compacted soil used in the comparison shall be no greater than $1x10^{-7}$ cm/sec. The hydraulic conductivity of any alternative to the two feet of compacted soil must be determined using recognized and generally accepted methods. The liquid flow rate comparison must be made using Equation 1 of this section, which is derived from Darcy's Law for gravity flow through porous media.

(Eq. 1):

$$\frac{Q}{A} = q = k\left(\frac{h}{t} + 1\right)$$

Where:

Q = flow rate (cubic centimeters/second);
A = surface area of the liner (squared centimeters);
q = flow rate per unit area (cubic centimeters/second/squared centimeter);
k = hydraulic conductivity of the liner (centimeters/second);
h = hydraulic head above the liner (centimeters); and
t = thickness of the liner (centimeters).

(3) The alternative composite liner must meet the requirements specified in paragraphs (b)(1) through (4) of this section.

(d) The *leachate collection and removal system* must be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and post-closure care period. The leachate collection and removal system must be:

(1) Designed and operated to maintain less than a 30-centimeter depth of leachate over the composite liner or alternative composite liner;

(2) Constructed of materials that are chemically resistant to the CCR and any non-CCR waste managed in the CCR unit and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying waste, waste cover materials, and equipment used at the CCR unit; and

(3) Designed and operated to minimize clogging during the active life and post-closure care period.

(e) Prior to construction of the CCR landfill or any lateral expansion of a CCR landfill, the owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the design of the composite liner (or, if applicable, alternative composite liner) and the leachate collection and removal system meets the requirements of this section.

(f) Upon completion of construction of the CCR landfill or any lateral expansion of a CCR landfill, the owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the design of the composite liner (or, if applicable, alternative composite liner) and the leachate collection and removal system have been constructed in accordance with the requirements of this section.

(g) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(f), the notification requirements specified in § 257.106(f), and the

Internet requirements specified in § 257.107(f).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

§ 257.71 Liner design criteria for existing CCR surface impoundments.

(a)(1) No later than October 17, 2016, the owner or operator of an existing CCR surface impoundment must document whether or not such unit was constructed with any one of the following:

(i) [Reserved]

(ii) A composite liner that meets the requirements of § 257.70(b); or

(iii) An alternative composite liner that meets the requirements of § 257.70(c).

(2) The hydraulic conductivity of the compacted soil must be determined using recognized and generally accepted methods.

(3) An existing CCR surface impoundment is considered to be an existing unlined CCR surface impoundment if either:

(i) The owner or operator of the CCR unit determines that the CCR unit is not constructed with a liner that meets the requirements of paragraph (a)(1)(ii) or (iii) of this section; or

(ii) The owner or operator of the CCR unit fails to document whether the CCR unit was constructed with a liner that meets the requirements of paragraph (a)(1)(ii) or (iii) of this section.

(4) All existing unlined CCR surface impoundments are subject to the requirements of § 257.101(a).

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority attesting that the documentation as to whether a CCR unit meets the requirements of paragraph (a) of this section is accurate.

(c) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(f), the notification requirements specified in § 257.106(f), and the Internet requirements specified in § 257.107(f).

(d) *Alternate Liner Demonstration*. An owner or operator of a CCR surface impoundment constructed without a composite liner or alternate composite liner, as defined in § 257.70(b) or (c), may submit an Alternate Liner Demonstration to the Administrator or the Participating State Director to demonstrate that based on the construction of the unit and surrounding site conditions, that there is no reasonable probability that continued operation of the surface impoundment will result in adverse effects to human health or the environment. The application and demonstration must be submitted to the Administrator or the Participating State Director no later than the relevant deadline in paragraph (d)(2) of this section. The Administrator or the Participating State Director will act on the submissions in accordance with the procedures in paragraph (d)(2) of this section.

(1) *Application and alternative liner demonstration submission requirements*. To obtain approval under this paragraph (d), the owner or operator of the CCR surface impoundment must submit all of the following:

(i) *Application*. The owner or operator of the CCR surface impoundment must submit a letter to the Administrator or the Participating State Director, announcing their intention to submit a demonstration under paragraph (d)(1)(ii) of this section. The application must include the location of the facility and identify the specific CCR surface impoundment for which the demonstration will be made. The letter must include all of the following:

(A) A certification signed by the owner or operator that the CCR unit is in full compliance with this subpart except for § 257.71(a)(1);

(B) Documentation supporting the certification required under paragraph (d)(1)(i)(A) of this section that includes all the following:

(*1*) Documentation that the groundwater monitoring network meets all the requirements of § 257.91. This must include documentation that the existing network of groundwater monitoring wells is sufficient to ensure detection of any groundwater contamination resulting from the impoundment,

based on direction of flow, well location, screening depth and other relevant factors. At a minimum, the documentation must include all of the following:

(*i*) Map(s) of groundwater monitoring well locations in relation to the CCR unit(s) that depict the elevation of the potentiometric surface and the direction(s) of groundwater flow across the site;

(*ii*) Well construction diagrams and drilling logs for all groundwater monitoring wells;

(*iii*) Maps that characterize the direction of groundwater flow accounting for temporal variations; and

(*iv*) Any other data and analyses the owner or operator of the CCR surface impoundment relied upon when determining the design and location of the groundwater monitoring network.

(*2*) Documentation that the CCR surface impoundment remains in detection monitoring pursuant to § 257.94 as a precondition for submitting an application. This includes documentation that the groundwater monitoring program meets the requirements of §§ 257.93 and 257.94. Such documentation includes data of constituent concentrations, summarized in table format, at each groundwater monitoring well monitored during each sampling event, and documentation of the most recent statistical tests conducted, analyses of the tests, and the rationale for the methods used in these comparisons. As part of this rationale, the owner or operator of the CCR surface impoundment must provide all data and analyses relied upon to comply with each of the requirements of this part;

(*3*) Documentation that the unit meets all the location restrictions under §§ 257.60 through 257.64;

(*4*) The most recent structural stability assessment required at § 257.73(d); and

(*5*) The most recent safety factor assessment required at § 257.73(e).

(C) Documentation of the design specifications for any engineered liner components, as well as all data and analyses the owner or operator of the CCR surface impoundment relied on when determining that the materials are suitable for use and that the construction of the liner is of good quality and in-line with proven and accepted engineering practices.

(D) Facilities with CCR surface impoundments located on properties adjacent to a water body must demonstrate that there is no reasonable probability that a complete and direct transport pathway (*i.e.*, not mediated by groundwater) can exist between the impoundment and any nearby water body. If the potential for such a pathway is identified, then the unit would not be eligible to submit a demonstration. If ongoing releases are identified, the owner or operator of the CCR unit must address these releases in accordance with § 257.96(a); and

(E) Upon submission of the application and any supplemental materials submitted in support of the application to the Administrator or the Participating State Director, the owner or operator must place the complete application in the facility's operating record as required by § 257.105(f)(14).

(ii) *Alternate Liner Demonstration Package*. The completed alternate liner demonstration package must be certified by a qualified professional engineer. The package must present evidence to demonstrate that, based on the construction of the unit and surrounding site conditions, there is no reasonable probability that operation of the surface impoundment will result in concentrations of constituents listed in appendix IV to this part in the uppermost aquifer at levels above a groundwater protection standard. For each line of evidence, as well as any other data and assumptions incorporated into the demonstration, the owner or operator of the CCR surface impoundment must include documentation on how the data were collected and why these data and assumptions adequately reflect potential contaminant transport from that specific impoundment. The alternate liner demonstration at a minimum must contain all of the following lines of evidence:

(A) *Characterization of site hydrogeology*. A characterization of the variability of site-specific soil and hydrogeology surrounding the surface impoundment that will control the rate and direction of contaminant transport from the impoundment. The

owner or operator must provide all of the following as part of this line of evidence:

(*1*) Measurements of the hydraulic conductivity in the uppermost aquifer from all monitoring wells associated with the impoundment(s) and discussion of the methods used to obtain these measurements;

(*2*) Measurements of the variability in subsurface soil characteristics collected from around the perimeter of the CCR surface impoundment to identify regions of substantially higher conductivity;

(*3*) Documentation that all sampling methods used are in line with recognized and generally accepted practices that can provide data at a spatial resolution necessary to adequately characterize the variability of subsurface conditions that will control contaminant transport;

(*4*) Explanation of how the specific number and location of samples collected are sufficient to capture subsurface variability if:

(*i*) Samples are advanced to a depth less than the top of the groundwater table or 20 feet beneath the bottom of the nearest water body, whichever is greater, and/or

(*ii*) Samples are spaced further apart than 200 feet around the impoundment perimeter;

(*5*) A narrative description of site geological history; and

(*6*) Conceptual site models with cross-sectional depictions of the site environmental sequence stratigraphy that include, at a minimum:

(*i*) The relative location of the impoundment with depth of ponded water noted;

(*ii*) Monitoring wells with screening depth noted;

(*iii*) Depiction of the location of other samples used in the development of the model;

(*iv*) The upper and lower limits of the uppermost aquifer across the site;

(*v*) The upper and lower limits of the depth to groundwater measured from monitoring wells if the uppermost aquifer is confined; and

(*vi*) Both the location and geometry of any nearby points of groundwater discharge or recharge (*e.g.*, surface water bodies) with potential to influence groundwater depth and flow measured around the unit.

(B) *Potential for infiltration.* A characterization of the potential for infiltration through any soil-based liner components and/or naturally occurring soil that control release and transport of leachate. All samples collected in the field for measurement of saturated hydraulic conductivity must be sent to a certified laboratory for analysis under controlled conditions and analyzed using recognized and generally accepted methodology. Facilities must document how the selected method is designed to simulate on-site conditions. The owner or operator must also provide documentation of the following as part of this line of evidence:

(*1*) The location, number, depth, and spacing of samples relied upon is supported by the data collected in paragraph (d)(1)(ii)(A) of this section and is sufficient to capture the variability of saturated hydraulic conductivity for the soil-based liner components and/or naturally occurring soil;

(*2*) The liquid used to pre-hydrate the samples and measure long-term hydraulic conductivity reflects the pH and major ion composition of the CCR surface impoundment porewater;

(*3*) That samples intended to represent the hydraulic conductivity of naturally occurring soils (*i.e.*, not mechanically compacted) are handled in a manner that will ensure the macrostructure of the soil is not disturbed during collection, transport, or analysis; and

(*4*) Any test for hydraulic conductivity relied upon includes, in addition to other relevant termination criteria specified by the method, criteria that equilibrium has been achieved between the inflow and outflow, within acceptable tolerance limits, for both electrical conductivity and pH.

(C) *Mathematical model to estimate the potential for releases.* Owners or operators must incorporate the data collected for paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section into a mathematical model to calculate the potential groundwater concentrations that may result in downgradient wells as a result of the impoundment. Facilities must also, where available, incorporate the national-scale data on constituent

concentrations and behavior provided by the existing risk record. Application of the model must account for the full range of site current and potential future conditions at and around the site to ensure that high-end groundwater concentrations have been effectively characterized. All of the data and assumptions incorporated into the model must be documented and justified.

(*1*) The models relied upon in this paragraph (d)(1)(ii)(C) must be well-established and validated, with documentation that can be made available for public review.

(*2*) The owner or operator must use the models to demonstrate that, for each constituent in appendix IV of this part, there is no reasonable probability that the peak groundwater concentration that may result from releases to groundwater from the CCR surface impoundment throughout its active life will exceed the groundwater protection standard at the waste boundary.

(*3*) The demonstration must include the peak groundwater concentrations modeled for all constituents in appendix IV of this part attributed both to the impoundment in isolation and in addition to background.

(D) Upon submission of the alternative liner demonstration to the Administrator or the Participating State Director, the owner or operator must place the complete demonstration in the facility's operating record as required by § 257.105(f)(15).

(2) *Procedures for adjudicating requests*—(i) *Deadline for application submission*. The owner or operator must submit the application under paragraph (d)(1)(i) of this section to EPA or the Participating State Director for approval no later than November 30, 2020.

(ii) *Deadline for demonstration submission*. If the application is approved the owner or operator must submit the demonstration required under paragraph (d)(1)(ii) of this section to EPA or the Participating State Director for approval no later than November 30, 2021.

(A) *Extension due to analytical limitations*. If the owner or operator cannot meet the demonstration deadline due to analytical limitations related to the measurement of hydraulic conductivity, the owner or operator must submit a request for an extension no later than September 1, 2021 that includes a summary of the data that have been analyzed to date for the samples responsible for the delay and an alternate timeline for completion that has been certified by the laboratory. The extension request must include all of the following:

(*1*) A timeline of fieldwork to confirm that samples were collected expeditiously;

(*2*) A chain of custody documenting when samples were sent to the laboratory;

(*3*) Written certification from the lab identifying how long it is projected for the tests to reach the relevant termination criteria related to solution chemistry, and

(*4*) Documentation of the progression towards all test termination metrics to date.

(B) *Length of extension*. If the extension is granted, the owner or operator will have 45 days beyond the timeframe certified by the laboratory to submit the completed demonstration.

(C) *Extension due to analytical limitations for chemical equilibrium*. If the measured hydraulic conductivity has not stabilized to within acceptable tolerance limits by the time the termination criteria for solution chemistry are met, the owner or operator must submit a preliminary demonstration no later than September 1, 2021 (with or without the one-time extension for analytical limitations).

(*1*) In this preliminary demonstration, the owner or operator must submit a justification of how the bounds of uncertainty applied to the available measurements of hydraulic conductivity ensure that the final value is not underestimated.

(*2*) EPA will review the preliminary demonstration to determine if it is complete and, if so, will propose to deny or to tentatively approve the demonstration. The proposed determination will be posted in the docket on *www.regulations.gov* and will be available for public comment for 30 days. After consideration of the comments, EPA will issue its decision on the application within four months of

receiving a complete preliminary demonstration.

(*3*) Once the final laboratory results are available, the owner or operator must submit a final demonstration that updates only the finalized hydraulic conductivity data to confirm that the model results in the preliminary demonstration are accurate.

(*4*) Until the time that EPA approves this final demonstration, the surface impoundment must remain in detection monitoring or the demonstration will be denied.

(*5*) If EPA tentatively approved the preliminary demonstration, EPA will then take action on the newly submitted final demonstration using the procedures in paragraphs (d)(2)(iv) through (vi) of this section.

(*6*) The public will have 30 days to comment but may comment only on the new information presented in the complete final demonstration or in EPA's tentative decision on the newly submitted demonstration.

(D) Upon submission of a request for an extension to the deadline for the demonstration due to analytical limitations pursuant to paragraph (d)(2)(ii)(A) of this section, the owner or operator must place the alternative liner demonstration extension request in the facility's operating record as required by § 257.105(f)(16).

(E) Upon submission of a preliminary demonstration pursuant to paragraph (d)(2)(ii)(C) of this section, the owner or operator must place the preliminary demonstration in the facility's operating record as required by § 257.105(f)(17).

(iii) *Application review*—(A) EPA will evaluate the application and may request additional information not required as part of the application as necessary to complete its review. Submission of a complete application will toll the facility's deadline to cease receipt of waste until issuance of a final decision under paragraph (d)(2)(iii)(C) of this section. Incomplete submissions will not toll the facility's deadline and will be rejected without further process.

(B) If the application is determined to be incomplete, EPA will notify the facility. The owner or operator must place the notification of an incomplete application in the facility's operating record as required by § 257.105(f)(18).

(C) EPA will publish a proposed decision on complete applications in a docket on *www.regulations.gov* for a 20-day comment period. After consideration of the comments, EPA will issue its decision on the application within sixty days of receiving a complete application.

(D) If the application is approved, the deadline to cease receipt of waste will be tolled until an alternate liner demonstration is determined to be incomplete or a final decision under paragraph (d)(2)(vi) of this section is issued.

(E) If the surface impoundment is determined by EPA to be ineligible to apply for an alternate liner demonstration, and the facility lacks alternative capacity to manage its CCR and/or non-CCR wastestreams, the owner or operator may apply for an alternative closure deadline in accordance with the procedures in § 257.103(f). The owner or operator will be given four months from the date of the ineligibility determination to apply for the alternative closure provisions in either § 257.103(f)(1) or (f)(2), during which time the facility's deadline to cease receipt of waste will be tolled.

(F) Upon receipt of a decision on the application pursuant to paragraph (d)(2)(iii)(C) of this section, the owner or operator must place the decision on the application in the facility's operating record as required by § 257.105(f)(19).

(iv) *Demonstration review*. EPA will evaluate the demonstration package and may request additional information not required as part of the demonstration as necessary to complete its review. Submission of a complete demonstration package will continue to toll the facility's deadline to cease receipt of waste into that CCR surface impoundment until issuance of a final decision under paragraph (d)(2)(vi) of this section. Upon a determination that a demonstration is incomplete the tolling of the facility's deadline will cease and the submission will be rejected without further process.

(v) *Proposed decision on demonstration*. EPA will publish a proposed decision on a complete demonstration package

in a docket on *www.regulations.gov* for a 30-day comment period.

(vi) *Final decision on demonstration.* After consideration of the comments, EPA will issue its decision on the alternate liner demonstration package within four months of receiving a complete demonstration package. Upon approval the facility may continue to operate the impoundment as long as the impoundment remains in detection monitoring. Upon detection of a statistically significant increase over background of a constituent listed on appendix III to this part, the facility must proceed in accordance with the requirements of paragraph (ix) of this section.

(vii) *Facility operating record requirements.* Upon receipt of the final decision on the alternate liner demonstration pursuant to paragraph (vi) of this section, the owner or operator must place the final decision in the facility's operating record as required by § 257.105(f)(20).

(viii) *Effect of Demonstration Denial.* If EPA determines that the CCR surface impoundment's alternate liner does not meet the standard for approval in this paragraph (d), the owner or operator must cease receipt of waste and initiate closure as determined in EPA's decision. If the owner or operator needs to obtain alternate capacity, they may do so in accordance with the procedures in § 257.103. The owner or operator will have four months from the date of EPA's decision to apply for an alternative closure deadline under either § 257.103(f)(1) or (f)(2), during which time the facility's deadline to cease receipt of waste will be tolled.

(ix) *Loss of authorization*–(A) The owner or operator of the CCR unit must comply with all of the following upon determining that there is a statistically significant increase over background levels for one or more constituents listed in appendix III to this part pursuant to § 257.94(e):

(*1*) In addition to the requirements specified in this paragraph (d), comply with the groundwater monitoring and corrective action procedures specified in §§ 257.90 through 257.98;

(*2*) Submit the notification required by § 257.94(e)(3) to EPA within 14 days of placing the notification in the facility's operating record as required by § 257.105(h)(5);

(*3*) Conduct intra-well analysis on each downgradient well to identify any trends of increasing concentrations as required by paragraph (d)(2)(ix)(B) of this section. The owner and operator must conduct the initial groundwater sampling and analysis for all constituents listed in appendix IV to this part according to the timeframes specified in § 257.95(b);

(*4*) The owner or operator may elect to pursue an alternative source demonstration pursuant to § 257.94(e)(2) that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality, provided that such alternative source demonstration must be conducted simultaneously with the sampling and analysis required by paragraph (d)(2)(ix)(A)(*3*) of this section. If the owner or operator believes that a successful demonstration has been made, the demonstration must be submitted to EPA for review and approval. The owner or operator must place the demonstration in the facility's operating record within the deadlines specified in § 257.94(e)(2) and submit the demonstration to EPA within 14 days of placing the demonstration in the facility's operating record.

(*5*) The alternative source demonstration must be posted to the facility's publicly accessible CCR internet site and submitted to EPA within 14 days of completion. EPA will publish a proposed decision on the alternative source determination on *www.regulations.gov* for a 20-day comment period. After consideration of the comments, EPA will issue its decision. If the alternative source demonstration is approved, the owner or operator may cease conducting the trend analysis and return to detection monitoring. If the alternative source demonstration is denied, the owner or operator must either complete the trend analysis or cease receipt of waste. Upon receipt of the final decision on the alternative source demonstration, the owner or operator must place the final decision in

the facility's operating record as required by § 257.105(f)(22).

(B) *Trend analysis.* (*1*) Except as provided for in § 257.95(c), the owner or operator must collect a minimum of four independent samples from each well (background and downgradient) on a quarterly basis within the first year of triggering assessment monitoring and analyze each sample for all constituents listed in appendix IV to this part. Consistent with 257.95(b), the first samples must be collected within 90 days of triggering assessment monitoring. After the initial year of sampling, the owner or operator must then conduct sampling as prescribed in § 257.95(d)(1). After each sampling event, the owner or operator must update the trend analysis with the new sampling information.

(*2*) The owner or operator of the CCR surface impoundment must apply an appropriate statistical test to identify any trends of increasing concentrations within the monitoring data. For normally distributed datasets, linear regression will be used to identify trends and determine the associated magnitude. For non-normally distributed datasets, the Mann-Kendall test will be used to identify trends and the Theil-Sen trend line will be used to determine the associated magnitude. If a trend is identified, the owner or operator of the CCR surface impoundment will use the upper 95th percentile confidence limit on the trend line to estimate future concentrations. The owner or operator will project this trendline into the future for a duration set to the maximum number of years established in § 257.102 for closure of the surface impoundment.

(*3*) A report of the results of each sampling event, as well as the final trend analysis, must be posted to the facility's publicly accessible CCR internet site and submitted to EPA within 14 days of completion. The trend analysis submitted to EPA must include all data relied upon by the facility to support the analysis. EPA will publish a proposed decision on the trend analysis on *www.regulations.gov* for a 30-day comment period. After consideration of the comments, EPA will issue its decision. If the trend analysis shows the potential for a future exceedance of a groundwater protection standard, before the closure deadlines established in § 257.102, the CCR surface impoundment must cease receipt of waste by the date provided in the notice.

(C) If the trend analysis demonstrates the presence of a statistically significant trend of increasing concentration for one or more constituents listed in appendix IV of this part with potential to result in an exceedance of any groundwater protection standard before closure is complete, or if at any time one or more constituents listed in appendix IV of this part are detected at a statistically significant level above a groundwater protection standard, the authorization will be withdrawn. The provisions at § 257.96(g)(3) do not apply to CCR surface impoundments operating under an alternate liner demonstration. Upon receipt of a decision that the alternate liner demonstration has been withdrawn, the owner or operator must place the decision in the facility's operating record as required by § 257.105(f)(24).

(D) The onus remains on the owner or operator of the CCR surface impoundment at all times to demonstrate that the CCR surface impoundment meets the conditions for authorization under this section. If at any point, any condition for qualification under this section has not been met, EPA or the Participating State Director can without further notice or process deny or revoke the owner or operator's authorization under paragraph (d)(2)(ix) of this section.

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36452, July 30, 2018; 85 FR 53561, Aug. 28, 2020; 85 FR 72539, Nov. 12, 2020]

§ 257.72 Liner design criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment.

(a) New CCR surface impoundments and lateral expansions of existing and new CCR surface impoundments must be designed, constructed, operated, and maintained with either a composite liner or an alternative composite liner that meets the requirements of § 257.70(b) or (c).

(b) Any liner specified in this section must be installed to cover all surrounding earth likely to be in contact with CCR. Dikes shall not be constructed on top of the composite liner.

(c) Prior to construction of the CCR surface impoundment or any lateral expansion of a CCR surface impoundment, the owner or operator must obtain certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the design of the composite liner or, if applicable, the design of an alternative composite liner complies with the requirements of this section.

(d) Upon completion, the owner or operator must obtain certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the composite liner or if applicable, the alternative composite liner has been constructed in accordance with the requirements of this section.

(e) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(f), the notification requirements specified in § 257.106(f), and the Internet requirements specified in § 257.107(f).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36452, July 30, 2018]

§ 257.73 Structural integrity criteria for existing CCR surface impoundments.

(a) The requirements of paragraphs (a)(1) through (4) of this section apply to all existing CCR surface impoundments, except for those existing CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified (e.g., a dike is constructed) such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of paragraphs (a)(1) through (4) of this section.

(1) No later than, December 17, 2015, the owner or operator of the CCR unit must place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) *Periodic hazard potential classification assessments.* (i) The owner or operator of the CCR unit must conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in paragraph (f) of this section. The owner or operator must document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator must also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in paragraph (a)(2)(i) of this section was conducted in accordance with the requirements of this section.

(3) *Emergency Action Plan (EAP)*—(i) *Development of the plan.* No later than April 17, 2017, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under paragraph (a)(2) of this section must prepare and maintain a written EAP. At a minimum, the EAP must:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) *Amendment of the plan.* (A) The owner or operator of a CCR unit subject to the requirements of paragraph (a)(3)(i) of this section may amend the written EAP at any time provided the revised plan is placed in the facility's operating record as required by § 257.105(f)(6). The owner or operator must amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP must be evaluated, at a minimum, every five years to ensure the information required in paragraph (a)(3)(i) of this section is accurate. As necessary, the EAP must be updated and a revised EAP placed in the facility's operating record as required by § 257.105(f)(6).

(iii) *Changes in hazard potential classification.* (A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation is placed in the facility's operating record as required by § 257.105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit must prepare a written EAP for the CCR unit as required by paragraph (a)(3)(i) of this section within six months of completing such periodic hazard potential assessment.

(iv) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of paragraph (a)(3) of this section.

(v) *Activation of the EAP.* The EAP must be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas must be designed, constructed, operated, and maintained with vegetated slopes of dikes not to exceed a height of 6 inches above the slope of the dike, except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of paragraphs (c) through (e) of this section apply to an owner or operator of an existing CCR surface impoundment that either:

(1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or

(2) Has a height of 20 feet or more.

(c)(1) No later than October 17, 2016, the owner or operator of the CCR unit must compile a history of construction, which shall contain, to the extent feasible, the information specified in paragraphs (c)(1)(i) through (xi) of this section.

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 7½ minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR

unit; the method of site preparation and construction of each zone of the CCR unit; and the approximate dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) *Changes to the history of construction*. If there is a significant change to any information compiled under paragraph (c)(1) of this section, the owner or operator of the CCR unit must update the relevant information and place it in the facility's operating record as required by § 257.105(f)(9).

(d) *Periodic structural stability assessments*. (1) The owner or operator of the CCR unit must conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment must, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas not to exceed a height of six inches above the slope of the dike, except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in paragraph (d)(1)(v)(A) of this section. The combined capacity of all spillways must be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in paragraph (d)(1)(v)(B) of this section.

(A) All spillways must be either:

(*1*) Of non-erodible construction and designed to carry sustained flows; or

(*2*) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways must adequately manage flow during and following the peak discharge from a:

(*1*) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

(*2*) 1000-year flood for a significant hazard potential CCR surface impoundment; or

(*3*) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in paragraph (d)(1) of this section must identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit must remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(3) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of this section.

(e) *Periodic safety factor assessments.* (1) The owner or operator must conduct an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in paragraphs (e)(1)(i) through (iv) of this section for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments must be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the long-term, maximum storage pool loading condition must equal or exceed 1.50.

(ii) The calculated static factor of safety under the maximum surcharge pool loading condition must equal or exceed 1.40.

(iii) The calculated seismic factor of safety must equal or exceed 1.00.

(iv) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety must equal or exceed 1.20.

(2) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in paragraph (e)(1) of this section meets the requirements of this section.

(f) *Timeframes for periodic assessments*—(1) *Initial assessments.* Except as provided by paragraph (f)(2) of this section, the owner or operator of the CCR unit must complete the initial assessments required by paragraphs (a)(2), (d), and (e) of this section no later than October 17, 2016. The owner or operator has completed an initial assessment when the owner or operator has placed the assessment required by paragraphs (a)(2), (d), and (e) of this section in the facility's operating record as required by § 257.105(f)(5), (10), and (12).

(2) *Use of a previously completed assessment(s) in lieu of the initial assessment(s).* The owner or operator of the CCR unit may elect to use a previously completed assessment to serve as the initial assessment required by paragraphs (a)(2), (d), and (e) of this section provided that the previously completed assessment(s):

(i) Was completed no earlier than 42 months prior to October 17, 2016; and

(ii) Meets the applicable requirements of paragraphs (a)(2), (d), and (e) of this section.

(3) *Frequency for conducting periodic assessments.* The owner or operator of the CCR unit must conduct and complete the assessments required by paragraphs (a)(2), (d), and (e) of this section every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. If the owner or operator elects to use a previously completed assessment(s) in lieu of the initial assessment as provided by paragraph (f)(2) of this section, the date of the report for the previously completed assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator places the completed assessment(s) into the facility's operating record within a reasonable

amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of this paragraph (f)(3), the owner or operator has completed an assessment when the relevant assessment(s) required by paragraphs (a)(2), (d), and (e) of this section has been placed in the facility's operating record as required by § 257.105(f)(5), (10), and (12).

(4) *Closure of the CCR unit.* An owner or operator of a CCR unit who either fails to complete a timely safety factor assessment or fails to demonstrate minimum safety factors as required by paragraph (e) of this section is subject to the requirements of § 257.101(b)(2).

(g) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(f), the notification requirements specified in § 257.106(f), and the internet requirements specified in § 257.107(f).

§ 257.74 Structural integrity criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment.

(a) The requirements of paragraphs (a)(1) through (4) of this section apply to all new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, except for those new CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified (e.g., a dike is constructed) such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of paragraphs (a)(1) through (4) of this section.

(1) No later than the initial receipt of CCR, the owner or operator of the CCR unit must place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) *Periodic hazard potential classification assessments.* (i) The owner or operator of the CCR unit must conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in paragraph (f) of this section. The owner or operator must document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator must also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in paragraph (a)(2)(i) of this section was conducted in accordance with the requirements of this section.

(3) *Emergency Action Plan (EAP)*—(i) *Development of the plan.* Prior to the initial receipt of CCR in the CCR unit, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under paragraph (a)(2) of this section must prepare and maintain a written EAP. At a minimum, the EAP must:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) *Amendment of the plan.* (A) The owner or operator of a CCR unit subject to the requirements of paragraph (a)(3)(i) of this section may amend the written EAP at any time provided the revised plan is placed in the facility's operating record as required by § 257.105(f)(6). The owner or operator must amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP must be evaluated, at a minimum, every five years to ensure the information required in paragraph (a)(3)(i) of this section is accurate. As necessary, the EAP must be updated and a revised EAP placed in the facility's operating record as required by § 257.105(f)(6).

(iii) *Changes in hazard potential classification.* (A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation is placed in the facility's operating record as required by § 257.105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit must prepare a written EAP for the CCR unit as required by paragraph (a)(3)(i) of this section within six months of completing such periodic hazard potential assessment.

(iv) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of paragraph (a)(3) of this section.

(v) *Activation of the EAP.* The EAP must be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas must be designed, constructed, operated, and maintained with vegetated slopes of dikes not to exceed a height of six inches above the slope of the dike, except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of paragraphs (c) through (e) of this section apply to an owner or operator of a new CCR surface impoundment and any lateral expansion of a CCR surface impoundment that either:

(1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or

(2) Has a height of 20 feet or more.

(c)(1) No later than the initial receipt of CCR in the CCR unit, the owner or operator unit must compile the design and construction plans for the CCR unit, which must include, to the extent feasible, the information specified in paragraphs (c)(1)(i) through (xi) of this section.

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 7½ minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and construction of each zone of the

CCR unit; and the dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) *Changes in the design and construction*. If there is a significant change to any information compiled under paragraph (c)(1) of this section, the owner or operator of the CCR unit must update the relevant information and place it in the facility's operating record as required by § 257.105(f)(13).

(d) *Periodic structural stability assessments*. (1) The owner or operator of the CCR unit must conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment must, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas not to exceed a height of six inches above the slope of the dike, except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in paragraph (d)(1)(v)(A) of this section. The combined capacity of all spillways must be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in paragraph (d)(1)(v)(B) of this section.

(A) All spillways must be either:

(*1*) Of non-erodible construction and designed to carry sustained flows; or

(*2*) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways must adequately manage flow during and following the peak discharge from a:

(*1*) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

(*2*) 1000-year flood for a significant hazard potential CCR surface impoundment; or

(*3*) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the

pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in paragraph (d)(1) of this section must identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit must remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(3) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of this section.

(e) *Periodic safety factor assessments.* (1) The owner or operator must conduct an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in paragraphs (e)(1)(i) through (v) of this section for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments must be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the end-of-construction loading condition must equal or exceed 1.30. The assessment of this loading condition is only required for the initial safety factor assessment and is not required for subsequent assessments.

(ii) The calculated static factor of safety under the long-term, maximum storage pool loading condition must equal or exceed 1.50.

(iii) The calculated static factor of safety under the maximum surcharge pool loading condition must equal or exceed 1.40.

(iv) The calculated seismic factor of safety must equal or exceed 1.00.

(v) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety must equal or exceed 1.20.

(2) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in paragraph (e)(1) of this section meets the requirements of this section.

(f) *Timeframes for periodic assessments*—(1) *Initial assessments.* Except as provided by paragraph (f)(2) of this section, the owner or operator of the CCR unit must complete the initial assessments required by paragraphs (a)(2), (d), and (e) of this section prior to the initial receipt of CCR in the unit. The owner or operator has completed an initial assessment when the owner or operator has placed the assessment required by paragraphs (a)(2), (d), and (e) of this section in the facility's operating record as required by § 257.105(f)(5), (10), and (12).

(2) *Frequency for conducting periodic assessments.* The owner or operator of the CCR unit must conduct and complete the assessments required by paragraphs (a)(2), (d), and (e) of this section every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator places the completed assessment(s) into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of this paragraph (f)(2), the owner or operator has completed an assessment when the relevant assessment(s) required by paragraphs (a)(2), (d), and (e) of this section has been placed in the facility's operating record as required by § 257.105(f)(5), (10), and (12).

(3) *Failure to document minimum safety factors during the initial assessment.* Until the date an owner or operator of

a CCR unit documents that the calculated factors of safety achieve the minimum safety factors specified in paragraphs (e)(1)(i) through (v) of this section, the owner or operator is prohibited from placing CCR in such unit.

(4) *Closure of the CCR unit.* An owner or operator of a CCR unit who either fails to complete a timely periodic safety factor assessment or fails to demonstrate minimum safety factors as required by paragraph (e) of this section is subject to the requirements of § 257.101(c).

(g) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(f), the notification requirements specified in § 257.106(f), and the internet requirements specified in § 257.107(f).

OPERATING CRITERIA

§ 257.80 Air criteria.

(a) The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit must adopt measures that will effectively minimize CCR from becoming airborne at the facility, including CCR fugitive dust originating from CCR units, roads, and other CCR management and material handling activities.

(b) *CCR fugitive dust control plan.* The owner or operator of the CCR unit must prepare and operate in accordance with a CCR fugitive dust control plan as specified in paragraphs (b)(1) through (7) of this section. This requirement applies in addition to, not in place of, any applicable standards under the Occupational Safety and Health Act.

(1) The CCR fugitive dust control plan must identify and describe the CCR fugitive dust control measures the owner or operator will use to minimize CCR from becoming airborne at the facility. The owner or operator must select, and include in the CCR fugitive dust control plan, the CCR fugitive dust control measures that are most appropriate for site conditions, along with an explanation of how the measures selected are applicable and appropriate for site conditions. Examples of control measures that may be appropriate include: Locating CCR inside an enclosure or partial enclosure; operating a water spray or fogging system; reducing fall distances at material drop points; using wind barriers, compaction, or vegetative covers; establishing and enforcing reduced vehicle speed limits; paving and sweeping roads; covering trucks transporting CCR; reducing or halting operations during high wind events; or applying a daily cover.

(2) If the owner or operator operates a CCR landfill or any lateral expansion of a CCR landfill, the CCR fugitive dust control plan must include procedures to emplace CCR as conditioned CCR. Conditioned CCR means wetting CCR with water to a moisture content that will prevent wind dispersal, but will not result in free liquids. In lieu of water, CCR conditioning may be accomplished with an appropriate chemical dust suppression agent.

(3) The CCR fugitive dust control plan must include procedures to log citizen complaints received by the owner or operator involving CCR fugitive dust events at the facility.

(4) The CCR fugitive dust control plan must include a description of the procedures the owner or operator will follow to periodically assess the effectiveness of the control plan.

(5) The owner or operator of a CCR unit must prepare an initial CCR fugitive dust control plan for the facility no later than October 19, 2015, or by initial receipt of CCR in any CCR unit at the facility if the owner or operator becomes subject to this subpart after October 19, 2015. The owner or operator has completed the initial CCR fugitive dust control plan when the plan has been placed in the facility's operating record as required by § 257.105(g)(1).

(6) *Amendment of the plan.* The owner or operator of a CCR unit subject to the requirements of this section may amend the written CCR fugitive dust control plan at any time provided the revised plan is placed in the facility's operating record as required by § 257.105(g)(1). The owner or operator must amend the written plan whenever there is a change in conditions that would substantially affect the written plan in effect, such as the construction and operation of a new CCR unit.

(7) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the initial CCR fugitive dust control plan, or any subsequent amendment of it, meets the requirements of this section.

(c) *Annual CCR fugitive dust control report.* The owner or operator of a CCR unit must prepare an annual CCR fugitive dust control report that includes a description of the actions taken by the owner or operator to control CCR fugitive dust, a record of all citizen complaints, and a summary of any corrective measures taken. The initial annual report must be completed no later than 14 months after placing the initial CCR fugitive dust control plan in the facility's operating record. The deadline for completing a subsequent report is one year after the date of completing the previous report. For purposes of this paragraph (c), the owner or operator has completed the annual CCR fugitive dust control report when the plan has been placed in the facility's operating record as required by § 257.105(g)(2).

(d) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(g), the notification requirements specified in § 257.106(g), and the internet requirements specified in § 257.107(g).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36452, July 30, 2018]

§ 257.81 Run-on and run-off controls for CCR landfills.

(a) The owner or operator of an existing or new CCR landfill or any lateral expansion of a CCR landfill must design, construct, operate, and maintain:

(1) A run-on control system to prevent flow onto the active portion of the CCR unit during the peak discharge from a 24-hour, 25-year storm; and

(2) A run-off control system from the active portion of the CCR unit to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(b) Run-off from the active portion of the CCR unit must be handled in accordance with the surface water requirements under § 257.3–3.

(c) *Run-on and run-off control system plan*—(1) *Content of the plan.* The owner or operator must prepare initial and periodic run-on and run-off control system plans for the CCR unit according to the timeframes specified in paragraphs (c)(3) and (4) of this section. These plans must document how the run-on and run-off control systems have been designed and constructed to meet the applicable requirements of this section. Each plan must be supported by appropriate engineering calculations. The owner or operator has completed the initial run-on and run-off control system plan when the plan has been placed in the facility's operating record as required by § 257.105(g)(3).

(2) *Amendment of the plan.* The owner or operator may amend the written run-on and run-off control system plan at any time provided the revised plan is placed in the facility's operating record as required by § 257.105(g)(3). The owner or operator must amend the written run-on and run-off control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) *Timeframes for preparing the initial plan*—(i) *Existing CCR landfills.* The owner or operator of the CCR unit must prepare the initial run-on and run-off control system plan no later than October 17, 2016.

(ii) *New CCR landfills and any lateral expansion of a CCR landfill.* The owner or operator must prepare the initial run-on and run-off control system plan no later than the date of initial receipt of CCR in the CCR unit.

(4) *Frequency for revising the plan.* The owner or operator of the CCR unit must prepare periodic run-on and run-off control system plans required by paragraph (c)(1) of this section every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first subsequent plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of

time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. For purposes of this paragraph (c)(4), the owner or operator has completed a periodic run-on and run-off control system plan when the plan has been placed in the facility's operating record as required by § 257.105(g)(3).

(5) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the initial and periodic run-on and run-off control system plans meet the requirements of this section.

(d) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(g), the notification requirements specified in § 257.106(g), and the internet requirements specified in § 257.107(g).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36452, July 30, 2018]

§ 257.82 Hydrologic and hydraulic capacity requirements for CCR surface impoundments.

(a) The owner or operator of an existing or new CCR surface impoundment or any lateral expansion of a CCR surface impoundment must design, construct, operate, and maintain an inflow design flood control system as specified in paragraphs (a)(1) and (2) of this section.

(1) The inflow design flood control system must adequately manage flow into the CCR unit during and following the peak discharge of the inflow design flood specified in paragraph (a)(3) of this section.

(2) The inflow design flood control system must adequately manage flow from the CCR unit to collect and control the peak discharge resulting from the inflow design flood specified in paragraph (a)(3) of this section.

(3) The inflow design flood is:

(i) For a high hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the probable maximum flood;

(ii) For a significant hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the 1,000-year flood;

(iii) For a low hazard potential CCR surface impoundment, as determined under § 257.73(a)(2) or § 257.74(a)(2), the 100-year flood; or

(iv) For an incised CCR surface impoundment, the 25-year flood.

(b) Discharge from the CCR unit must be handled in accordance with the surface water requirements under § 257.3–3.

(c) *Inflow design flood control system plan*—(1) *Content of the plan*. The owner or operator must prepare initial and periodic inflow design flood control system plans for the CCR unit according to the timeframes specified in paragraphs (c)(3) and (4) of this section. These plans must document how the inflow design flood control system has been designed and constructed to meet the requirements of this section. Each plan must be supported by appropriate engineering calculations. The owner or operator of the CCR unit has completed the inflow design flood control system plan when the plan has been placed in the facility's operating record as required by § 257.105(g)(4).

(2) *Amendment of the plan*. The owner or operator of the CCR unit may amend the written inflow design flood control system plan at any time provided the revised plan is placed in the facility's operating record as required by § 257.105(g)(4). The owner or operator must amend the written inflow design flood control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) *Timeframes for preparing the initial plan*—(i) *Existing CCR surface impoundments*. The owner or operator of the CCR unit must prepare the initial inflow design flood control system plan no later than October 17, 2016.

(ii) *New CCR surface impoundments and any lateral expansion of a CCR surface impoundment*. The owner or operator must prepare the initial inflow design flood control system plan no later than the date of initial receipt of CCR in the CCR unit.

(4) *Frequency for revising the plan*. The owner or operator must prepare periodic inflow design flood control system plans required by paragraph (c)(1) of

this section every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first periodic plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. For purposes of this paragraph (c)(4), the owner or operator has completed an inflow design flood control system plan when the plan has been placed in the facility's operating record as required by § 257.105(g)(4).

(5) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the initial and periodic inflow design flood control system plans meet the requirements of this section.

(d) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(g), the notification requirements specified in § 257.106(g), and the internet requirements specified in § 257.107(g).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36451, July 30, 2018]

§ 257.83 Inspection requirements for CCR surface impoundments.

(a) *Inspections by a qualified person.* (1) All CCR surface impoundments and any lateral expansion of a CCR surface impoundment must be examined by a qualified person as follows:

(i) At intervals not exceeding seven days, inspect for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit;

(ii) At intervals not exceeding seven days, inspect the discharge of all outlets of hydraulic structures which pass underneath the base of the surface impoundment or through the dike of the CCR unit for abnormal discoloration, flow or discharge of debris or sediment; and

(iii) At intervals not exceeding 30 days, monitor all CCR unit instrumentation.

(iv) The results of the inspection by a qualified person must be recorded in the facility's operating record as required by § 257.105(g)(5).

(2) *Timeframes for inspections by a qualified person*—(i) *Existing CCR surface impoundments.* The owner or operator of the CCR unit must initiate the inspections required under paragraph (a) of this section no later than October 19, 2015.

(ii) *New CCR surface impoundments and any lateral expansion of a CCR surface impoundment.* The owner or operator of the CCR unit must initiate the inspections required under paragraph (a) of this section upon initial receipt of CCR by the CCR unit.

(b) Annual i*nspections by a qualified professional engineer.* (1) If the existing or new CCR surface impoundment or any lateral expansion of the CCR surface impoundment is subject to the periodic structural stability assessment requirements under § 257.73(d) or § 257.74(d), the CCR unit must additionally be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards. The inspection must, at a minimum, include:

(i) A review of available information regarding the status and condition of the CCR unit, including, but not limited to, files available in the operating record (e.g., CCR unit design and construction information required by §§ 257.73(c)(1) and 257.74(c)(1), previous periodic structural stability assessments required under §§ 257.73(d) and 257.74(d), the results of inspections by a qualified person, and results of previous annual inspections);

(ii) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit and appurtenant structures; and

(iii) A visual inspection of any hydraulic structures underlying the base of the CCR unit or passing through the

dike of the CCR unit for structural integrity and continued safe and reliable operation.

(2) *Inspection report.* The qualified professional engineer must prepare a report following each inspection that addresses the following:

(i) Any changes in geometry of the impounding structure since the previous annual inspection;

(ii) The location and type of existing instrumentation and the maximum recorded readings of each instrument since the previous annual inspection;

(iii) The approximate minimum, maximum, and present depth and elevation of the impounded water and CCR since the previous annual inspection;

(iv) The storage capacity of the impounding structure at the time of the inspection;

(v) The approximate volume of the impounded water and CCR at the time of the inspection;

(vi) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit and appurtenant structures; and

(vii) Any other change(s) which may have affected the stability or operation of the impounding structure since the previous annual inspection.

(3) *Timeframes for conducting the initial inspection*—(i) *Existing CCR surface impoundments.* The owner or operator of the CCR unit must complete the initial inspection required by paragraphs (b)(1) and (2) of this section no later than January 19, 2016.

(ii) *New CCR surface impoundments and any lateral expansion of a CCR surface impoundment.* The owner or operator of the CCR unit must complete the initial annual inspection required by paragraphs (b)(1) and (2) of this section is completed no later than 14 months following the date of initial receipt of CCR in the CCR unit.

(4) *Frequency of inspections.* (i) Except as provided for in paragraph (b)(4)(ii) of this section, the owner or operator of the CCR unit must conduct the inspection required by paragraphs (b)(1) and (2) of this section on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of this section, the owner or operator has completed an inspection when the inspection report has been placed in the facility's operating record as required by § 257.105(g)(6).

(ii) In any calendar year in which both the periodic inspection by a qualified professional engineer and the quinquennial (occurring every five years) structural stability assessment by a qualified professional engineer required by §§ 257.73(d) and 257.74(d) are required to be completed, the annual inspection is not required, provided the structural stability assessment is completed during the calendar year. If the annual inspection is not conducted in a year as provided by this paragraph (b)(4)(ii), the deadline for completing the next annual inspection is one year from the date of completing the quinquennial structural stability assessment.

(5) If a deficiency or release is identified during an inspection, the owner or operator must remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(c) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(g), the notification requirements specified in § 257.106(g), and the internet requirements specified in § 257.107(g).

[80 FR 21468, Apr. 17, 2015, as amended at 80 FR 37992, July 2, 2015]

§ 257.84 Inspection requirements for CCR landfills.

(a) *Inspections by a qualified person.* (1) All CCR landfills and any lateral expansion of a CCR landfill must be examined by a qualified person as follows:

(i) At intervals not exceeding seven days, inspect for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit; and

(ii) The results of the inspection by a qualified person must be recorded in the facility's operating record as required by § 257.105(g)(8).

(2) *Timeframes for inspections by a qualified person*—(i) *Existing CCR landfills*. The owner or operator of the CCR unit must initiate the inspections required under paragraph (a) of this section no later than October 19, 2015.

(ii) *New CCR landfills and any lateral expansion of a CCR landfill*. The owner or operator of the CCR unit must initiate the inspections required under paragraph (a) of this section upon initial receipt of CCR by the CCR unit.

(b) *Annual inspections by a qualified professional engineer*. (1) Existing and new CCR landfills and any lateral expansion of a CCR landfill must be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards. The inspection must, at a minimum, include:

(i) A review of available information regarding the status and condition of the CCR unit, including, but not limited to, files available in the operating record (e.g., the results of inspections by a qualified person, and results of previous annual inspections); and

(ii) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit.

(2) *Inspection report*. The qualified professional engineer must prepare a report following each inspection that addresses the following:

(i) Any changes in geometry of the structure since the previous annual inspection;

(ii) The approximate volume of CCR contained in the unit at the time of the inspection;

(iii) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit; and

(iv) Any other change(s) which may have affected the stability or operation of the CCR unit since the previous annual inspection.

(3) *Timeframes for conducting the initial inspection*—(i) *Existing CCR landfills*. The owner or operator of the CCR unit must complete the initial inspection required by paragraphs (b)(1) and (2) of this section no later than January 19, 2016.

(ii) *New CCR landfills and any lateral expansion of a CCR landfill*. The owner or operator of the CCR unit must complete the initial annual inspection required by paragraphs (b)(1) and (2) of this section no later than 14 months following the date of initial receipt of CCR in the CCR unit.

(4) *Frequency of inspections*. The owner or operator of the CCR unit must conduct the inspection required by paragraphs (b)(1) and (2) of this section on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of this section, the owner or operator has completed an inspection when the inspection report has been placed in the facility's operating record as required by § 257.105(g)(9).

(5) If a deficiency or release is identified during an inspection, the owner or operator must remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(c) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(g), the notification requirements specified in § 257.106(g), and the internet requirements specified in § 257.107(g).

[80 FR 21468, Apr. 17, 2015, as amended at 80 FR 37992, July 2, 2015]

GROUNDWATER MONITORING AND CORRECTIVE ACTION

§ 257.90 Applicability.

(a) All CCR landfills, CCR surface impoundments, and lateral expansions of CCR units are subject to the groundwater monitoring and corrective action requirements under §§ 257.90 through 257.99, except as provided in paragraph (g) of this section.

(b) *Initial timeframes*—(1) *Existing CCR landfills and existing CCR surface impoundments.* No later than October 17, 2017, the owner or operator of the CCR unit must be in compliance with the following groundwater monitoring requirements:

(i) Install the groundwater monitoring system as required by § 257.91;

(ii) Develop the groundwater sampling and analysis program to include selection of the statistical procedures to be used for evaluating groundwater monitoring data as required by § 257.93;

(iii) Initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background and downgradient well as required by § 257.94(b); and

(iv) Begin evaluating the groundwater monitoring data for statistically significant increases over background levels for the constituents listed in appendix III of this part as required by § 257.94.

(2) *New CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units.* Prior to initial receipt of CCR by the CCR unit, the owner or operator must be in compliance with the groundwater monitoring requirements specified in paragraph (b)(1)(i) and (ii) of this section. In addition, the owner or operator of the CCR unit must initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background well as required by § 257.94(b).

(c) Once a groundwater monitoring system and groundwater monitoring program has been established at the CCR unit as required by this subpart, the owner or operator must conduct groundwater monitoring and, if necessary, corrective action throughout the active life and post-closure care period of the CCR unit.

(d) In the event of a release from a CCR unit, the owner or operator must immediately take all necessary measures to control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment. The owner or operator of the CCR unit must comply with all applicable requirements in §§ 257.96, 257.97, and 257.98.

(e) *Annual groundwater monitoring and corrective action report.* For existing CCR landfills and existing CCR surface impoundments, no later than January 31, 2018, and annually thereafter, the owner or operator must prepare an annual groundwater monitoring and corrective action report. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, the owner or operator must prepare the initial annual groundwater monitoring and corrective action report no later than January 31 of the year following the calendar year a groundwater monitoring system has been established for such CCR unit as required by this subpart, and annually thereafter. For the preceding calendar year, the annual report must document the status of the groundwater monitoring and corrective action program for the CCR unit, summarize key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. For purposes of this section, the owner or operator has prepared the annual report when the report is placed in the facility's operating record as required by § 257.105(h)(1). At a minimum, the annual groundwater monitoring and corrective action report must contain the following information, to the extent available:

(1) A map, aerial image, or diagram showing the CCR unit and all background (or upgradient) and downgradient monitoring wells, to include the well identification numbers, that are part of the groundwater monitoring program for the CCR unit;

(2) Identification of any monitoring wells that were installed or decommissioned during the preceding year, along with a narrative description of why those actions were taken;

(3) In addition to all the monitoring data obtained under §§ 257.90 through 257.98, a summary including the number of groundwater samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs;

(4) A narrative discussion of any transition between monitoring programs (e.g., the date and circumstances for transitioning from detection monitoring to assessment monitoring in addition to identifying the constituent(s) detected at a statistically significant increase over background levels); and

(5) Other information required to be included in the annual report as specified in §§ 257.90 through 257.98.

(6) A section at the beginning of the annual report that provides an overview of the current status of groundwater monitoring and corrective action programs for the CCR unit. At a minimum, the summary must specify all of the following:

(i) At the start of the current annual reporting period, whether the CCR unit was operating under the detection monitoring program in § 257.94 or the assessment monitoring program in § 257.95;

(ii) At the end of the current annual reporting period, whether the CCR unit was operating under the detection monitoring program in § 257.94 or the assessment monitoring program in § 257.95;

(iii) If it was determined that there was a statistically significant increase over background for one or more constituents listed in appendix III to this part pursuant to § 257.94(e):

(A) Identify those constituents listed in appendix III to this part and the names of the monitoring wells associated with such an increase; and

(B) Provide the date when the assessment monitoring program was initiated for the CCR unit.

(iv) If it was determined that there was a statistically significant level above the groundwater protection standard for one or more constituents listed in appendix IV to this part pursuant to § 257.95(g) include all of the following:

(A) Identify those constituents listed in appendix IV to this part and the names of the monitoring wells associated with such an increase;

(B) Provide the date when the assessment of corrective measures was initiated for the CCR unit;

(C) Provide the date when the public meeting was held for the assessment of corrective measures for the CCR unit; and

(D) Provide the date when the assessment of corrective measures was completed for the CCR unit.

(v) Whether a remedy was selected pursuant to § 257.97 during the current annual reporting period, and if so, the date of remedy selection; and

(vi) Whether remedial activities were initiated or are ongoing pursuant to § 257.98 during the current annual reporting period.

(f) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the internet requirements specified in § 257.107(h).

(g) *Suspension of groundwater monitoring requirements.* (1) The Participating State Director or EPA where EPA is the permitting authority may suspend the groundwater monitoring requirements under §§ 257.90 through 257.95 for a CCR unit for a period of up to ten years, if the owner or operator provides written documentation that, based on the characteristics of the site in which the CCR unit is located, there is no potential for migration of any of the constituents listed in appendices III and IV to this part from that CCR unit to the uppermost aquifer during the active life of the CCR unit and the post-closure care period. This demonstration must be certified by a qualified professional engineer and approved by the Participating State Director or EPA where EPA is the permitting authority, and must be based upon:

(i) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, including at a minimum, the information necessary to evaluate or interpret the effects of the following

properties or processes on contaminant fate and transport:

(A) Aquifer Characteristics, including hydraulic conductivity, hydraulic gradient, effective porosity, aquifer thickness, degree of saturation, stratigraphy, degree of fracturing and secondary porosity of soils and bedrock, aquifer heterogeneity, groundwater discharge, and groundwater recharge areas;

(B) Waste Characteristics, including quantity, type, and origin;

(C) Climatic Conditions, including annual precipitation, leachate generation estimates, and effects on leachate quality;

(D) Leachate Characteristics, including leachate composition, solubility, density, the presence of immiscible constituents, Eh, and pH; and

(E) Engineered Controls, including liners, cover systems, and aquifer controls (*e.g.*, lowering the water table). These must be evaluated under design and failure conditions to estimate their long-term residual performance.

(ii) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(2) The owner or operator of the CCR unit may renew this suspension for additional ten year periods by submitting written documentation that the site characteristics continue to ensure there will be no potential for migration of any of the constituents listed in Appendices III and IV of this part. The documentation must include, at a minimum, the information specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this section and a certification by a qualified professional engineer and approved by the State Director or EPA where EPA is the permitting authority. The owner or operator must submit the documentation supporting their renewal request for the state's or EPA's review and approval of their extension one year before the groundwater monitoring suspension is due to expire. If the existing groundwater monitoring extension expires or is not approved, the owner or operator must begin groundwater monitoring according to paragraph (a) of this section within 90 days. The owner or operator may continue to renew the suspension for ten-year periods, provided the owner or operator demonstrate that the standard in paragraph (g)(1) of this section continues to be met for the unit. The owner or operator must place each completed demonstration in the facility's operating record.

(3) The owner or operator of the CCR unit must include in the annual groundwater monitoring and corrective action report required by § 257.90(e) or § 257.100(e)(5)(ii) any approved no migration demonstration.

[80 FR 21468, Apr. 17, 2015, as amended at 81 FR 51807, Aug. 5, 2016; 83 FR 36452, July 30, 2018; 85 FR 53561, Aug. 28, 2020]

§ 257.91 Groundwater monitoring systems.

(a) *Performance standard.* The owner or operator of a CCR unit must install a groundwater monitoring system that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that:

(1) Accurately represent the quality of background groundwater that has not been affected by leakage from a CCR unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the CCR management area where:

(i) Hydrogeologic conditions do not allow the owner or operator of the CCR unit to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Accurately represent the quality of groundwater passing the waste boundary of the CCR unit. The downgradient monitoring system must be installed at the waste boundary that ensures detection of groundwater contamination in the uppermost aquifer. All potential contaminant pathways must be monitored.

(b) The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that must include thorough characterization of:

(1) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and

(2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(c) The groundwater monitoring system must include the minimum number of monitoring wells necessary to meet the performance standards specified in paragraph (a) of this section, based on the site-specific information specified in paragraph (b) of this section. The groundwater monitoring system must contain:

(1) A minimum of one upgradient and three downgradient monitoring wells; and

(2) Additional monitoring wells as necessary to accurately represent the quality of background groundwater that has not been affected by leakage from the CCR unit and the quality of groundwater passing the waste boundary of the CCR unit.

(d) The owner or operator of multiple CCR units may install a multiunit groundwater monitoring system instead of separate groundwater monitoring systems for each CCR unit.

(1) The multiunit groundwater monitoring system must be equally as capable of detecting monitored constituents at the waste boundary of the CCR unit as the individual groundwater monitoring system specified in paragraphs (a) through (c) of this section for each CCR unit based on the following factors:

(i) Number, spacing, and orientation of each CCR unit;

(ii) Hydrogeologic setting;

(iii) Site history; and

(iv) Engineering design of the CCR unit.

(2) [Reserved]

(e) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well borehole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (*i.e.*, the space between the borehole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater.

(1) The owner or operator of the CCR unit must document and include in the operating record the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices. The qualified professional engineer must be given access to this documentation when completing the groundwater monitoring system certification required under paragraph (f) of this section.

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to the design specifications throughout the life of the monitoring program.

(f) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the groundwater monitoring system has been designed and constructed to meet the requirements of this section. If the groundwater monitoring system includes the minimum number of monitoring wells specified in paragraph (c)(1) of this section, the certification must document the basis supporting this determination.

(g) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the internet requirements specified in § 257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36453, July 30, 2018; 85 FR 53561, Aug. 28, 2020]

§ 257.92 [Reserved]

§ 257.93 Groundwater sampling and analysis requirements.

(a) The groundwater monitoring program must include consistent sampling

and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells required by § 257.91. The owner or operator of the CCR unit must develop a sampling and analysis program that includes procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

(b) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples. For purposes of §§ 257.90 through 257.98, the term *constituent* refers to both hazardous constituents and other monitoring parameters listed in either appendix III or IV of this part.

(c) Groundwater elevations must be measured in each well immediately prior to purging, each time groundwater is sampled. The owner or operator of the CCR unit must determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells which monitor the same CCR management area must be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

(d) The owner or operator of the CCR unit must establish background groundwater quality in a hydraulically upgradient or background well(s) for each of the constituents required in the particular groundwater monitoring program that applies to the CCR unit as determined under § 257.94(a) or § 257.95(a). Background groundwater quality may be established at wells that are not located hydraulically upgradient from the CCR unit if it meets the requirements of § 257.91(a)(1).

(e) The number of samples collected when conducting detection monitoring and assessment monitoring (for both downgradient and background wells) must be consistent with the statistical procedures chosen under paragraph (f) of this section and the performance standards under paragraph (g) of this section. The sampling procedures shall be those specified under § 257.94(b) through (d) for detection monitoring, § 257.95(b) through (d) for assessment monitoring, and § 257.96(b) for corrective action.

(f) The owner or operator of the CCR unit must select one of the statistical methods specified in paragraphs (f)(1) through (5) of this section to be used in evaluating groundwater monitoring data for each specified constituent. The statistical test chosen shall be conducted separately for each constituent in each monitoring well.

(1) A parametric analysis of variance followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance based on ranks followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure, in which an interval for each constituent is established from the distribution of the background data and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of paragraph (g) of this section.

(6) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the selected statistical method is appropriate for evaluating the groundwater monitoring data for the

CCR management area. The certification must include a narrative description of the statistical method selected to evaluate the groundwater monitoring data.

(g) Any statistical method chosen under paragraph (f) of this section shall comply with the following performance standards, as appropriate, based on the statistical test method used:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of constituents. Normal distributions of data values shall use parametric methods. Non-normal distributions shall use non-parametric methods. If the distribution of the constituents is shown by the owner or operator of the CCR unit to be inappropriate for a normal theory test, then the data must be transformed or a distribution-free (non-parametric) theory test must be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparison procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be such that this approach is at least as effective as any other approach in this section for evaluating groundwater data. The parameter values shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a predictional interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be such that this approach is at least as effective as any other approach in this section for evaluating groundwater data. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method must account for data below the limit of detection with one or more statistical procedures that shall at least as effective as any other approach in this section for evaluating groundwater data. Any practical quantitation limit that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method must include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(h) The owner or operator of the CCR unit must determine whether or not there is a statistically significant increase over background values for each constituent required in the particular groundwater monitoring program that applies to the CCR unit, as determined under § 257.94(a) or § 257.95(a).

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the groundwater quality of each constituent at each monitoring well designated pursuant to § 257.91(a)(2) or (d)(1) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (f) and (g) of this section.

(2) Within 90 days after completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background for any constituent at each monitoring well.

(i) The owner or operator must measure ''total recoverable metals'' concentrations in measuring groundwater

quality. Measurement of total recoverable metals captures both the particulate fraction and dissolved fraction of metals in natural waters. Groundwater samples shall not be field-filtered prior to analysis.

(j) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the Internet requirements specified in § 257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36453, July 30, 2018]

§ 257.94 Detection monitoring program.

(a) The owner or operator of a CCR unit must conduct detection monitoring at all groundwater monitoring wells consistent with this section. At a minimum, a detection monitoring program must include groundwater monitoring for all constituents listed in appendix III to this part.

(b) Except as provided in paragraph (d) of this section, the monitoring frequency for the constituents listed in appendix III to this part shall be at least semiannual during the active life of the CCR unit and the post-closure period. For existing CCR landfills and existing CCR surface impoundments, a minimum of eight independent samples from each background and downgradient well must be collected and analyzed for the constituents listed in appendix III and IV to this part no later than October 17, 2017. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, a minimum of eight independent samples for each background well must be collected and analyzed for the constituents listed in appendices III and IV to this part during the first six months of sampling.

(c) The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events must be consistent with § 257.93(e), and must account for any unique characteristics of the site, but must be at least one sample from each background and downgradient well.

(d) The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix III to this part during the active life and the post-closure care period based on the availability of groundwater. If there is not adequate groundwater flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency must be evaluated on a site-specific basis. The demonstration must be supported by, at a minimum, the information specified in paragraphs (d)(1) and (2) of this section.

(1) Information documenting that the need for less frequent sampling. The alternative frequency must be based on consideration of the following factors:

(i) Lithology of the aquifer and unsaturated zone;

(ii) Hydraulic conductivity of the aquifer and unsaturated zone; and

(iii) Groundwater flow rates.

(2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered within a timeframe that will not materially delay establishment of an assessment monitoring program.

(3) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of this section. The owner or operator must include the demonstration providing the basis for the alternative monitoring frequency and the certification by a qualified professional engineer or the approval from the Participating State Director or approval from EPA where EPA is the permitting authority in the annual groundwater monitoring and corrective action report required by § 257.90(e).

(e) If the owner or operator of the CCR unit determines, pursuant to § 257.93(h) that there is a statistically significant increase over background levels for one or more of the constituents listed in appendix III to this part at any monitoring well at the waste

boundary specified under § 257.91(a)(2), the owner or operator must:

(1) Except as provided for in paragraph (e)(2) of this section, within 90 days of detecting a statistically significant increase over background levels for any constituent, establish an assessment monitoring program meeting the requirements of § 257.95.

(2) The owner or operator may demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. The owner or operator must complete the written demonstration within 90 days of detecting a statistically significant increase over background levels to include obtaining a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority verifying the accuracy of the information in the report. If a successful demonstration is completed within the 90-day period, the owner or operator of the CCR unit may continue with a detection monitoring program under this section. If a successful demonstration is not completed within the 90-day period, the owner or operator of the CCR unit must initiate an assessment monitoring program as required under § 257.95. The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by § 257.90(e), in addition to the certification by a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority.

(3) The owner or operator of a CCR unit must prepare a notification stating that an assessment monitoring program has been established. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by § 257.105(h)(5).

(f) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the Internet requirements specified in § 257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36453, July 30, 2018]

§ 257.95 Assessment monitoring program.

(a) Assessment monitoring is required whenever a statistically significant increase over background levels has been detected for one or more of the constituents listed in appendix III to this part.

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator of the CCR unit must sample and analyze the groundwater for all constituents listed in appendix IV to this part. The number of samples collected and analyzed for each well during each sampling event must be consistent with § 257.93(e), and must account for any unique characteristics of the site, but must be at least one sample from each well.

(c) The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix IV to this part during the active life and the post-closure care period based on the availability of groundwater. If there is not adequate groundwater flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency must be evaluated on a site-specific basis. The demonstration must be supported by, at a minimum, the information specified in paragraphs (c)(1) and (2) of this section.

(1) Information documenting that the need for less frequent sampling. The alternative frequency must be based on consideration of the following factors:

(i) Lithology of the aquifer and unsaturated zone;

(ii) Hydraulic conductivity of the aquifer and unsaturated zone; and

(iii) Groundwater flow rates.

(2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered

within a timeframe that will not materially delay the initiation of any necessary remediation measures.

(3) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of this section. The owner or operator must include the demonstration providing the basis for the alternative monitoring frequency and the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority in the annual groundwater monitoring and corrective action report required by § 257.90(e).

(d) After obtaining the results from the initial and subsequent sampling events required in paragraph (b) of this section, the owner or operator must:

(1) Within 90 days of obtaining the results, and on at least a semiannual basis thereafter, resample all wells that were installed pursuant to the requirements of § 257.91, conduct analyses for all parameters in appendix III to this part and for those constituents in appendix IV to this part that are detected in response to paragraph (b) of this section, and record their concentrations in the facility operating record. The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events must be consistent with § 257.93(e), and must account for any unique characteristics of the site, but must be at least one sample from each background and downgradient well;

(2) Establish groundwater protection standards for all constituents detected pursuant to paragraph (b) or (d) of this section. The groundwater protection standards must be established in accordance with paragraph (h) of this section; and

(3) Include the recorded concentrations required by paragraph (d)(1) of this section, identify the background concentrations established under § 257.94(b), and identify the groundwater protection standards established under paragraph (d)(2) of this section in the annual groundwater monitoring and corrective action report required by § 257.90(e).

(e) If the concentrations of all constituents listed in appendices III and IV to this part are shown to be at or below background values, using the statistical procedures in § 257.93(g), for two consecutive sampling events, the owner or operator may return to detection monitoring of the CCR unit. The owner or operator must prepare a notification stating that detection monitoring is resuming for the CCR unit. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by § 257.105(h)(7).

(f) If the concentrations of any constituent in appendices III and IV to this part are above background values, but all concentrations are below the groundwater protection standard established under paragraph (h) of this section, using the statistical procedures in § 257.93(g), the owner or operator must continue assessment monitoring in accordance with this section.

(g) If one or more constituents in appendix IV to this part are detected at statistically significant levels above the groundwater protection standard established under paragraph (h) of this section in any sampling event, the owner or operator must prepare a notification identifying the constituents in appendix IV to this part that have exceeded the groundwater protection standard. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by § 257.105(h)(8). The owner or operator of the CCR unit also must:

(1) Characterize the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately selected. The characterization must be sufficient to support a complete and accurate assessment of the corrective measures necessary to effectively clean up all releases from the CCR unit pursuant to § 257.96. Characterization of the release includes the following minimum measures:

(i) Install additional monitoring wells necessary to define the contaminant plume(s);

(ii) Collect data on the nature and estimated quantity of material released including specific information on the constituents listed in appendix IV of this part and the levels at which they are present in the material released;

(iii) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (d)(1) of this section; and

(iv) Sample all wells in accordance with paragraph (d)(1) of this section to characterize the nature and extent of the release.

(2) Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance with paragraph (g)(1) of this section. The owner or operator has completed the notifications when they are placed in the facility's operating record as required by § 257.105(h)(8).

(3) Within 90 days of finding that any of the constituents listed in appendix IV to this part have been detected at a statistically significant level exceeding the groundwater protection standards the owner or operator must either:

(i) Initiate an assessment of corrective measures as required by § 257.96; or

(ii) Demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. Any such demonstration must be supported by a report that includes the factual or evidentiary basis for any conclusions and must be certified to be accurate by a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority. If a successful demonstration is made, the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this section, and may return to detection monitoring if the constituents in Appendix III and Appendix IV of this part are at or below background as specified in paragraph (e) of this section. The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by § 257.90(e), in addition to the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority.

(4) If a successful demonstration has not been made at the end of the 90 day period provided by paragraph (g)(3)(ii) of this section, the owner or operator of the CCR unit must initiate the assessment of corrective measures requirements under § 257.96.

(5) The owner or operator must prepare a notification stating that an assessment of corrective measures has been initiated.

(h) The owner or operator of the CCR unit must establish a groundwater protection standard for each constituent in appendix IV to this part detected in the groundwater. The groundwater protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been established under §§ 141.62 and 141.66 of this title, the MCL for that constituent;

(2) For the following constituents:

(i) Cobalt 6 micrograms per liter (μg/l);

(ii) Lead 15 μg/l;

(iii) Lithium 40 μg/l; and

(iv) Molybdenum 100 μg/l.

(3) For constituents for which the background level is higher than the levels identified under paragraphs (h)(1) and (h)(2) of this section, the background concentration.

(i) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the Internet requirements specified in § 257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36453, July 30, 2018; 85 FR 53561, Aug. 28, 2020]

§ 257.96 Assessment of corrective measures.

(a) Within 90 days of finding that any constituent listed in Appendix IV to this part has been detected at a statistically significant level exceeding the groundwater protection standard defined under § 257.95(h), or immediately upon detection of a release from a CCR unit, the owner or operator must initiate an assessment of corrective measures to prevent further releases, to remediate any releases and to restore affected area to original conditions. The assessment of corrective measures must be completed within 90 days, unless the owner or operator demonstrates the need for additional time to complete the assessment of corrective measures due to site-specific conditions or circumstances. The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority attesting that the demonstration is accurate. The 90-day deadline to complete the assessment of corrective measures may be extended for no longer than 60 days. The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by § 257.90(e), in addition to the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority.

(b) The owner or operator of the CCR unit must continue to monitor groundwater in accordance with the assessment monitoring program as specified in § 257.95.

(c) The assessment under paragraph (a) of this section must include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under § 257.97 addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The institutional requirements, such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator must place the completed assessment of corrective measures in the facility's operating record. The assessment has been completed when it is placed in the facility's operating record as required by § 257.105(h)(10).

(e) The owner or operator must discuss the results of the corrective measures assessment at least 30 days prior to the selection of remedy, in a public meeting with interested and affected parties.

(f) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the Internet requirements specified in § 257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36454, July 30, 2018]

§ 257.97 Selection of remedy.

(a) Based on the results of the corrective measures assessment conducted under § 257.96, the owner or operator must, as soon as feasible, select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. This requirement applies in addition to, not in place of, any applicable standards under the Occupational Safety and Health Act. The owner or operator must prepare a semiannual report describing the progress in selecting and designing the remedy. Upon selection of a remedy, the owner or operator must prepare a final report describing the selected remedy and how it meets the standards specified in paragraph (b) of this section. The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the remedy selected meets the requirements of this section. The report has been completed when it is

placed in the operating record as required by § 257.105(h)(12).

(b) Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the groundwater protection standard as specified pursuant to § 257.95(h);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of constituents in appendix IV to this part into the environment;

(4) Remove from the environment as much of the contaminated material that was released from the CCR unit as is feasible, taking into account factors such as avoiding inappropriate disturbance of sensitive ecosystems;

(5) Comply with standards for management of wastes as specified in § 257.98(d).

(c) In selecting a remedy that meets the standards of paragraph (b) of this section, the owner or operator of the CCR unit shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to CCR remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and re-disposal of contaminant;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, re-disposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases; and

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) The degree to which community concerns are addressed by a potential remedy(s).

(d) The owner or operator must specify as part of the selected remedy a schedule(s) for implementing and completing remedial activities. Such a schedule must require the completion of remedial activities within a reasonable period of time taking into consideration the factors set forth in paragraphs (d)(1) through (6) of this section. The owner or operator of the CCR unit must consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination, as determined by the characterization required under § 257.95(g);

(2) Reasonable probabilities of remedial technologies in achieving compliance with the groundwater protection standards established under § 257.95(h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for CCR managed during implementation of the remedy;

(4) Potential risks to human health and the environment from exposure to

contamination prior to completion of the remedy;

(5) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Groundwater quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to CCR constituents;

(v) The hydrogeologic characteristic of the facility and surrounding land; and

(vi) The availability of alternative water supplies; and

(6) Other relevant factors.

(e) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the Internet requirements specified in § 257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36454, July 30, 2018]

§ 257.98 Implementation of the corrective action program.

(a) Within 90 days of selecting a remedy under § 257.97, the owner or operator must initiate remedial activities. Based on the schedule established under § 257.97(d) for implementation and completion of remedial activities the owner or operator must:

(1) Establish and implement a corrective action groundwater monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under § 257.95;

(ii) Documents the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with the groundwater protection standard pursuant to paragraph (c) of this section.

(2) Implement the corrective action remedy selected under § 257.97; and

(3) Take any interim measures necessary to reduce the contaminants leaching from the CCR unit, and/or potential exposures to human or ecological receptors. Interim measures must, to the greatest extent feasible, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to § 257.97. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to any of the constituents listed in appendix IV of this part;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause any of the constituents listed in appendix IV to this part to migrate or be released;

(vi) Potential for exposure to any of the constituents listed in appendix IV to this part as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) If an owner or operator of the CCR unit, determines, at any time, that compliance with the requirements of § 257.97(b) is not being achieved through the remedy selected, the owner or operator must implement other methods or techniques that could feasibly achieve compliance with the requirements.

(c) Remedies selected pursuant to § 257.97 shall be considered complete when:

(1) The owner or operator of the CCR unit demonstrates compliance with the groundwater protection standards established under § 257.95(h) has been achieved at all points within the plume of contamination that lie beyond the groundwater monitoring well system established under § 257.91.

(2) Compliance with the groundwater protection standards established under § 257.95(h) has been achieved by demonstrating that concentrations of constituents listed in appendix IV to this part have not exceeded the groundwater protection standard(s) for a period of three consecutive years using

the statistical procedures and performance standards in § 257.93(f) and (g).

(3) All actions required to complete the remedy have been satisfied.

(d) All CCR that are managed pursuant to a remedy required under § 257.97, or an interim measure required under paragraph (a)(3) of this section, shall be managed in a manner that complies with all applicable RCRA requirements.

(e) Upon completion of the remedy, the owner or operator must prepare a notification stating that the remedy has been completed. The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority attesting that the remedy has been completed in compliance with the requirements of paragraph (c) of this section. The report has been completed when it is placed in the operating record as required by § 257.105(h)(13).

(f) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(h), the notification requirements specified in § 257.106(h), and the internet requirements specified in § 257.107(h).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36454, July 30, 2018]

CLOSURE AND POST-CLOSURE CARE

§ 257.100 Inactive CCR surface impoundments.

(a) Inactive CCR surface impoundments are subject to all of the requirements of this subpart applicable to existing CCR surface impoundments.

(b)–(d) [Reserved]

(e) *Timeframes for certain inactive CCR surface impoundments.* (1) An inactive CCR surface impoundment for which the owner or operator has completed the actions by the deadlines specified in paragraphs (e)(1)(i) through (iii) of this section is eligible for the alternative timeframes specified in paragraphs (e)(2) through (6) of this section. The owner or operator of the CCR unit must comply with the applicable recordkeeping, notification, and internet requirements associated with these provisions. For the inactive CCR surface impoundment:

(i) The owner or operator must have prepared and placed in the facility's operating record by December 17, 2015, a notification of intent to initiate closure of the inactive CCR surface impoundment pursuant to § 257.105(i)(1);

(ii) The owner or operator must have provided notification to the State Director and/or appropriate Tribal authority by January 19, 2016, of the intent to initiate closure of the inactive CCR surface impoundment pursuant to § 257.106(i)(1); and

(iii) The owner or operator must have placed on its CCR Web site by January 19, 2016, the notification of intent to initiate closure of the inactive CCR surface impoundment pursuant to § 257.107(i)(1).

(2) *Location restrictions.* (i) No later than April 16, 2020, the owner or operator of the inactive CCR surface impoundment must:

(A) Complete the demonstration for placement above the uppermost aquifer as set forth by § 257.60(a), (b), and (c)(3);

(B) Complete the demonstration for wetlands as set forth by § 257.61(a), (b), and (c)(3);

(C) Complete the demonstration for fault areas as set forth by § 257.62(a), (b), and (c)(3);

(D) Complete the demonstration for seismic impact zones as set forth by § 257.63(a), (b), and (c)(3); and

(E) Complete the demonstration for unstable areas as set forth by § 257.64(a), (b), (c), and (d)(3).

(ii) An owner or operator of an inactive CCR surface impoundment who fails to demonstrate compliance with the requirements of paragraph (e)(2)(i) of this section is subject to the closure requirements of § 257.101(b)(1).

(3) *Design criteria.* The owner or operator of the inactive CCR surface impoundment must:

(i) No later than April 17, 2018, complete the documentation of liner type as set forth by § 257.71(a) and (b).

(ii) No later than June 16, 2017, place on or immediately adjacent to the CCR unit the permanent identification marker as set forth by § 257.73(a)(1).

(iii) No later than October 16, 2018, prepare and maintain an Emergency

Action Plan as set forth by § 257.73(a)(3).

(iv) No later than April 17, 2018, compile a history of construction as set forth by § 257.73(b) and (c).

(v) No later than April 17, 2018, complete the initial hazard potential classification, structural stability, and safety factor assessments as set forth by § 257.73(a)(2), (b), (d), (e), and (f).

(4) *Operating criteria.* The owner or operator of the inactive CCR surface impoundment must:

(i) No later than April 18, 2017, prepare the initial CCR fugitive dust control plan as set forth in § 257.80(b).

(ii) No later than April 17, 2018, prepare the initial inflow design flood control system plan as set forth in § 257.82(c).

(iii) No later than April 18, 2017, initiate the inspections by a qualified person as set forth by § 257.83(a).

(iv) No later than July 19, 2017, complete the initial annual inspection by a qualified professional engineer as set forth by § 257.83(b).

(5) *Groundwater monitoring and corrective action.* The owner or operator of the inactive CCR surface impoundment must:

(i) No later than April 17, 2019, comply with groundwater monitoring requirements set forth in §§ 257.90(b) and 257.94(b); and

(ii) No later than August 1, 2019, prepare the initial groundwater monitoring and corrective action report as set forth in § 257.90(e).

(6) *Closure and post-closure care.* The owner or operator of the inactive CCR surface impoundment must:

(i) No later than April 17, 2018, prepare an initial written closure plan as set forth in § 257.102(b); and

(ii) No later than April 17, 2018, prepare an initial written post-closure care plan as set forth in § 257.104(d).

[80 FR 21468, Apr. 17, 2015, as amended at 81 FR 51807, Aug. 5, 2016]

§ 257.101 Closure or retrofit of CCR units.

(a) The owner or operator of an existing unlined CCR surface impoundment, as determined under § 257.71(a), is subject to the requirements of paragraph (a)(1) of this section.

(1) Except as provided by paragraph (a)(3) of this section, as soon as technically feasible, but not later than April 11, 2021, an owner or operator of an existing unlined CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of § 257.102.

(2) An owner or operator of an existing unlined CCR surface impoundment that closes in accordance with paragraph (a)(1) of this section must include a statement in the notification required under § 257.102(g) or (k)(5) that the CCR surface impoundment is closing or retrofitting under the requirements of paragraph (a)(1) of this section.

(3) The timeframe specified in paragraph (a)(1) of this section does not apply if the owner or operator complies with the alternate liner demonstration provisions specified in § 257.71(d) or the alternative closure procedures specified in § 257.103.

(4) At any time after the initiation of closure under paragraph (a)(1) of this section, the owner or operator may cease closure activities and initiate a retrofit of the CCR unit in accordance with the requirements of § 257.102(k).

(b) The owner or operator of an existing CCR surface impoundment is subject to the requirements of paragraph (b)(1) of this section.

(1)(i) *Location standard under § 257.60.* Except as provided by paragraph (b)(4) of this section, the owner or operator of an existing CCR surface impoundment that has not demonstrated compliance with the location standard specified in § 257.60(a) must cease placing CCR and non-CCR wastestreams into such CCR unit as soon as technically feasible, but no later than April 11, 2021, and close the CCR unit in accordance with the requirements of § 257.102.

(ii) *Location standards under §§ 257.61 through 257.64.* Except as provided by paragraph (b)(4) of this section, within six months of determining that an existing CCR surface impoundment has not demonstrated compliance with any location standard specified in §§ 257.61(a), 257.62(a), 257.63(a), and

257.64(a), the owner or operator of the CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of § 257.102.

(2) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by § 257.73(e) by the deadlines specified in § 257.73(f)(1) through (3) or failing to document that the calculated factors of safety for the existing CCR surface impoundment achieve the minimum safety factors specified in § 257.73(e)(1)(i) through (iv), the owner or operator of the CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of § 257.102.

(3) An owner or operator of an existing CCR surface impoundment that closes in accordance with paragraphs (b)(1) or (2) of this section must include a statement in the notification required under § 257.102(g) that the CCR surface impoundment is closing under the requirements of paragraphs (b)(1) or (2) of this section.

(4) The timeframe specified in paragraph (b)(1) of this section does not apply if the owner or operator complies with the alternative closure procedures specified in § 257.103.

(c) The owner or operator of a new CCR surface impoundment is subject to the requirements of paragraph (c)(1) of this section.

(1) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by § 257.74(e) by the deadlines specified in § 257.74(f)(1) through (3) or failing to document that the calculated factors of safety for the new CCR surface impoundment achieve the minimum safety factors specified in § 257.74(e)(1)(i) through (v), the owner or operator of the CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of § 257.102.

(2) An owner or operator of an new CCR surface impoundment that closes in accordance with paragraph (c)(1) of this section must include a statement in the notification required under § 257.102(g) that the CCR surface impoundment is closing under the requirements of paragraph (c)(1) of this section.

(d) The owner or operator of an existing CCR landfill is subject to the requirements of paragraph (d)(1) of this section.

(1) Except as provided by paragraph (d)(3) of this section, within six months of determining that an existing CCR landfill has not demonstrated compliance with the location restriction for unstable areas specified in § 257.64(a), the owner or operator of the CCR unit must cease placing CCR and non-CCR waste streams into such CCR landfill and close the CCR unit in accordance with the requirements of § 257.102.

(2) An owner or operator of an existing CCR landfill that closes in accordance with paragraph (d)(1) of this section must include a statement in the notification required under § 257.102(g) that the CCR landfill is closing under the requirements of paragraph (d)(1) of this section.

(3) The timeframe specified in paragraph (d)(1) of this section does not apply if the owner or operator complies with the alternative closure procedures specified in § 257.103.

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36454, July 30, 2018; 85 FR 53561, Aug. 28, 2020; 85 FR 72542, Nov. 12, 2020]

§ 257.102 Criteria for conducting the closure or retrofit of CCR units.

(a) Closure of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit must be completed either by leaving the CCR in place and installing a final cover system or through removal of the CCR and decontamination of the CCR unit, as described in paragraphs (b) through (j) of this section. Retrofit of a CCR surface impoundment must be completed in accordance with the requirements in paragraph (k) of this section.

(b) *Written closure plan*—(1) *Content of the plan.* The owner or operator of a CCR unit must prepare a written closure plan that describes the steps necessary to close the CCR unit at any point during the active life of the CCR unit consistent with recognized and

generally accepted good engineering practices. The written closure plan must include, at a minimum, the information specified in paragraphs (b)(1)(i) through (vi) of this section.

(i) A narrative description of how the CCR unit will be closed in accordance with this section.

(ii) If closure of the CCR unit will be accomplished through removal of CCR from the CCR unit, a description of the procedures to remove the CCR and decontaminate the CCR unit in accordance with paragraph (c) of this section.

(iii) If closure of the CCR unit will be accomplished by leaving CCR in place, a description of the final cover system, designed in accordance with paragraph (d) of this section, and the methods and procedures to be used to install the final cover. The closure plan must also discuss how the final cover system will achieve the performance standards specified in paragraph (d) of this section.

(iv) An estimate of the maximum inventory of CCR ever on-site over the active life of the CCR unit.

(v) An estimate of the largest area of the CCR unit ever requiring a final cover as required by paragraph (d) of this section at any time during the CCR unit's active life.

(vi) A schedule for completing all activities necessary to satisfy the closure criteria in this section, including an estimate of the year in which all closure activities for the CCR unit will be completed. The schedule should provide sufficient information to describe the sequential steps that will be taken to close the CCR unit, including identification of major milestones such as coordinating with and obtaining necessary approvals and permits from other agencies, the dewatering and stabilization phases of CCR surface impoundment closure, or installation of the final cover system, and the estimated timeframes to complete each step or phase of CCR unit closure. When preparing the written closure plan, if the owner or operator of a CCR unit estimates that the time required to complete closure will exceed the timeframes specified in paragraph (f)(1) of this section, the written closure plan must include the site-specific information, factors and considerations that would support any time extension sought under paragraph (f)(2) of this section.

(2) *Timeframes for preparing the initial written closure plan*—(i) *Existing CCR landfills and existing CCR surface impoundments*. No later than October 17, 2016, the owner or operator of the CCR unit must prepare an initial written closure plan consistent with the requirements specified in paragraph (b)(1) of this section.

(ii) *New CCR landfills and new CCR surface impoundments, and any lateral expansion of a CCR unit*. No later than the date of the initial receipt of CCR in the CCR unit, the owner or operator must prepare an initial written closure plan consistent with the requirements specified in paragraph (b)(1) of this section.

(iii) The owner or operator has completed the written closure plan when the plan, including the certification required by paragraph (b)(4) of this section, has been placed in the facility's operating record as required by § 257.105(i)(4).

(3) *Amendment of a written closure plan*. (i) The owner or operator may amend the initial or any subsequent written closure plan developed pursuant to paragraph (b)(1) of this section at any time.

(ii) The owner or operator must amend the written closure plan whenever:

(A) There is a change in the operation of the CCR unit that would substantially affect the written closure plan in effect; or

(B) Before or after closure activities have commenced, unanticipated events necessitate a revision of the written closure plan.

(iii) The owner or operator must amend the closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written closure plan. If a written closure plan is revised after closure activities have commenced for a CCR unit, the owner or operator must amend the current closure plan no later than 30 days following the triggering event.

(4) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the initial and any amendment of the written closure plan meets the requirements of this section.

(c) *Closure by removal of CCR.* An owner or operator may elect to close a CCR unit by removing and decontaminating all areas affected by releases from the CCR unit. CCR removal and decontamination of the CCR unit are complete when constituent concentrations throughout the CCR unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring concentrations do not exceed the groundwater protection standard established pursuant to § 257.95(h) for constituents listed in appendix IV to this part.

(d) *Closure performance standard when leaving CCR in place*—(1) The owner or operator of a CCR unit must ensure that, at a minimum, the CCR unit is closed in a manner that will:

(i) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;

(ii) Preclude the probability of future impoundment of water, sediment, or slurry;

(iii) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system during the closure and post-closure care period;

(iv) Minimize the need for further maintenance of the CCR unit; and

(v) Be completed in the shortest amount of time consistent with recognized and generally accepted good engineering practices.

(2) *Drainage and stabilization of CCR surface impoundments.* The owner or operator of a CCR surface impoundment or any lateral expansion of a CCR surface impoundment must meet the requirements of paragraphs (d)(2)(i) and (ii) of this section prior to installing the final cover system required under paragraph (d)(3) of this section.

(i) Free liquids must be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.

(ii) Remaining wastes must be stabilized sufficient to support the final cover system.

(3) *Final cover system.* If a CCR unit is closed by leaving CCR in place, the owner or operator must install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of paragraph (d)(3)(i) of this section, or the requirements of the alternative final cover system specified in paragraph (d)(3)(ii) of this section.

(i) The final cover system must be designed and constructed to meet the criteria in paragraphs (d)(3)(i)(A) through (D) of this section. The design of the final cover system must be included in the written closure plan required by paragraph (b) of this section.

(A) The permeability of the final cover system must be less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less.

(B) The infiltration of liquids through the closed CCR unit must be minimized by the use of an infiltration layer that contains a minimum of 18 inches of earthen material.

(C) The erosion of the final cover system must be minimized by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

(D) The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.

(ii) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in paragraphs (d)(3)(ii)(A) through (C) of this section. The design of the final cover system must be included in the written closure plan required by paragraph (b) of this section.

(A) The design of the final cover system must include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer

specified in paragraphs (d)(3)(i)(A) and (B) of this section.

(B) The design of the final cover system must include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in paragraph (d)(3)(i)(C) of this section.

(C) The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.

(iii) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the design of the final cover system meets the requirements of this section.

(e) *Initiation of closure activities.* Except as provided for in paragraph (e)(4) of this section and § 257.103, the owner or operator of a CCR unit must commence closure of the CCR unit no later than the applicable timeframes specified in either paragraph (e)(1) or (2) of this section.

(1) The owner or operator must commence closure of the CCR unit no later than 30 days after the date on which the CCR unit either:

(i) Receives the known final receipt of waste, either CCR or any non-CCR waste stream; or

(ii) Removes the known final volume of CCR from the CCR unit for the purpose of beneficial use of CCR.

(2)(i) Except as provided by paragraph (e)(2)(ii) of this section, the owner or operator must commence closure of a CCR unit that has not received CCR or any non-CCR waste stream or is no longer removing CCR for the purpose of beneficial use within two years of the last receipt of waste or within two years of the last removal of CCR material for the purpose of beneficial use.

(ii) Notwithstanding paragraph (e)(2)(i) of this section, the owner or operator of the CCR unit may secure an additional two years to initiate closure of the idle unit provided the owner or operator provides written documentation that the CCR unit will continue to accept wastes or will start removing CCR for the purpose of beneficial use. The documentation must be supported by, at a minimum, the information specified in paragraphs (e)(2)(ii)(A) and (B) of this section. The owner or operator may obtain two-year extensions provided the owner or operator continues to be able to demonstrate that there is reasonable likelihood that the CCR unit will accept wastes in the foreseeable future or will remove CCR from the unit for the purpose of beneficial use. The owner or operator must place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by § 257.105(i)(5) prior to the end of any two-year period.

(A) Information documenting that the CCR unit has remaining storage or disposal capacity or that the CCR unit can have CCR removed for the purpose of beneficial use; and

(B) Information demonstrating that that there is a reasonable likelihood that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future or that CCR can be removed for the purpose of beneficial use. The narrative must include a best estimate as to when the CCR unit will resume receiving CCR or non-CCR waste streams. The situations listed in paragraphs (e)(2)(ii)(B)(*1*) through (*4*) of this section are examples of situations that would support a determination that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future.

(*1*) Normal plant operations include periods during which the CCR unit does not receive CCR or non-CCR waste streams, such as the alternating use of two or more CCR units whereby at any point in time one CCR unit is receiving CCR while CCR is being removed from a second CCR unit after its dewatering.

(*2*) The CCR unit is dedicated to a coal-fired boiler unit that is temporarily idled (e.g., CCR is not being generated) and there is a reasonable likelihood that the coal-fired boiler will resume operations in the future.

(*3*) The CCR unit is dedicated to an operating coal-fired boiler (*i.e.*, CCR is being generated); however, no CCR are being placed in the CCR unit because the CCR are being entirely diverted to

beneficial uses, but there is a reasonable likelihood that the CCR unit will again be used in the foreseeable future.

(*4*) The CCR unit currently receives only non-CCR waste streams and those non-CCR waste streams are not generated for an extended period of time, but there is a reasonable likelihood that the CCR unit will again receive non-CCR waste streams in the future.

(iii) In order to obtain additional time extension(s) to initiate closure of a CCR unit beyond the two years provided by paragraph (e)(2)(i) of this section, the owner or operator of the CCR unit must include with the demonstration required by paragraph (e)(2)(ii) of this section the following statement signed by the owner or operator or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) For purposes of this subpart, closure of the CCR unit has commenced if the owner or operator has ceased placing waste and completes any of the following actions or activities:

(i) Taken any steps necessary to implement the written closure plan required by paragraph (b) of this section;

(ii) Submitted a completed application for any required state or agency permit or permit modification; or

(iii) Taken any steps necessary to comply with any state or other agency standards that are a prerequisite, or are otherwise applicable, to initiating or completing the closure of a CCR unit.

(4) The timeframes specified in paragraphs (e)(1) and (2) of this section do not apply to any of the following owners or operators:

(i) [Reserved]

(ii) An owner or operator of an existing unlined CCR surface impoundment closing the CCR unit as required by § 257.101(a);

(iii) An owner or operator of an existing CCR surface impoundment closing the CCR unit as required by § 257.101(b);

(iv) An owner or operator of a new CCR surface impoundment closing the CCR unit as required by § 257.101(c); or

(v) An owner or operator of an existing CCR landfill closing the CCR unit as required by § 257.101(d).

(f) *Completion of closure activities.* (1) Except as provided for in paragraph (f)(2) of this section, the owner or operator must complete closure of the CCR unit:

(i) For existing and new CCR landfills and any lateral expansion of a CCR landfill, within six months of commencing closure activities.

(ii) For existing and new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, within five years of commencing closure activities.

(2)(i) *Extensions of closure timeframes.* The timeframes for completing closure of a CCR unit specified under paragraphs (f)(1) of this section may be extended if the owner or operator can demonstrate that it was not feasible to complete closure of the CCR unit within the required timeframes due to factors beyond the facility's control. If the owner or operator is seeking a time extension beyond the time specified in the written closure plan as required by paragraph (b)(1) of this section, the demonstration must include a narrative discussion providing the basis for additional time beyond that specified in the closure plan. The owner or operator must place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by § 257.105(i)(6) prior to the end of any two-year period. Factors that may support such a demonstration include:

(A) Complications stemming from the climate and weather, such as unusual amounts of precipitation or a significantly shortened construction season;

(B) Time required to dewater a surface impoundment due to the volume of CCR contained in the CCR unit or the characteristics of the CCR in the unit;

(C) The geology and terrain surrounding the CCR unit will affect the

amount of material needed to close the CCR unit; or

(D) Time required or delays caused by the need to coordinate with and obtain necessary approvals and permits from a state or other agency.

(ii) *Maximum time extensions.* (A) CCR surface impoundments of 40 acres or smaller may extend the time to complete closure by no longer than two years.

(B) CCR surface impoundments larger than 40 acres may extend the timeframe to complete closure of the CCR unit multiple times, in two-year increments. For each two-year extension sought, the owner or operator must substantiate the factual circumstances demonstrating the need for the extension. No more than a total of five two-year extensions may be obtained for any CCR surface impoundment.

(C) CCR landfills may extend the timeframe to complete closure of the CCR unit multiple times, in one-year increments. For each one-year extension sought, the owner or operator must substantiate the factual circumstances demonstrating the need for the extension. No more than a total of two one-year extensions may be obtained for any CCR landfill.

(iii) In order to obtain additional time extension(s) to complete closure of a CCR unit beyond the times provided by paragraph (f)(1) of this section, the owner or operator of the CCR unit must include with the demonstration required by paragraph (f)(2)(i) of this section the following statement signed by the owner or operator or an authorized representative:

> I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) Upon completion, the owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority verifying that closure has been completed in accordance with the closure plan specified in paragraph (b) of this section and the requirements of this section.

(g) No later than the date the owner or operator initiates closure of a CCR unit, the owner or operator must prepare a notification of intent to close a CCR unit. The notification must include the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority for the design of the final cover system as required by § 257.102(d)(3)(iii), if applicable. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(7).

(h) Within 30 days of completion of closure of the CCR unit, the owner or operator must prepare a notification of closure of a CCR unit. The notification must include the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority as required by § 257.102(f)(3). The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(8).

(i) *Deed notations.* (1) Except as provided by paragraph (i)(4) of this section, following closure of a CCR unit, the owner or operator must record a notation on the deed to the property, or some other instrument that is normally examined during title search.

(2) The notation on the deed must in perpetuity notify any potential purchaser of the property that:

(i) The land has been used as a CCR unit; and

(ii) Its use is restricted under the post-closure care requirements as provided by § 257.104(d)(1)(iii).

(3) Within 30 days of recording a notation on the deed to the property, the owner or operator must prepare a notification stating that the notation has been recorded. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(9).

(4) An owner or operator that closes a CCR unit in accordance with paragraph (c) of this section is not subject to the requirements of paragraphs (i)(1) through (3) of this section.

(j) The owner or operator of the CCR unit must comply with the closure recordkeeping requirements specified in § 257.105(i), the closure notification requirements specified in § 257.106(i), and the closure Internet requirements specified in § 257.107(i).

(k) *Criteria to retrofit an existing CCR surface impoundment.* (1) To retrofit an existing CCR surface impoundment, the owner or operator must:

(i) First remove all CCR, including any contaminated soils and sediments from the CCR unit; and

(ii) Comply with the requirements in § 257.72.

(iii) A CCR surface impoundment undergoing a retrofit remains subject to all other requirements of this subpart, including the requirement to conduct any necessary corrective action.

(2) *Written retrofit plan*—(i) *Content of the plan.* The owner or operator must prepare a written retrofit plan that describes the steps necessary to retrofit the CCR unit consistent with recognized and generally accepted good engineering practices. The written retrofit plan must include, at a minimum, all of the following information:

(A) A narrative description of the specific measures that will be taken to retrofit the CCR unit in accordance with this section.

(B) A description of the procedures to remove all CCR and contaminated soils and sediments from the CCR unit.

(C) An estimate of the maximum amount of CCR that will be removed as part of the retrofit operation.

(D) An estimate of the largest area of the CCR unit that will be affected by the retrofit operation.

(E) A schedule for completing all activities necessary to satisfy the retrofit criteria in this section, including an estimate of the year in which retrofit activities of the CCR unit will be completed.

(ii) *Timeframes for preparing the initial written retrofit plan.* (A) No later than 60 days prior to date of initiating retrofit activities, the owner or operator must prepare an initial written retrofit plan consistent with the requirements specified in paragraph (k)(2) of this section. For purposes of this subpart, initiation of retrofit activities has commenced if the owner or operator has ceased placing waste in the unit and completes any of the following actions or activities:

(*1*) Taken any steps necessary to implement the written retrofit plan;

(*2*) Submitted a completed application for any required state or agency permit or permit modification; or

(*3*) Taken any steps necessary to comply with any state or other agency standards that are a prerequisite, or are otherwise applicable, to initiating or completing the retrofit of a CCR unit.

(B) The owner or operator has completed the written retrofit plan when the plan, including the certification required by paragraph (k)(2)(iv) of this section, has been placed in the facility's operating record as required by § 257.105(j)(1).

(iii) *Amendment of a written retrofit plan.* (A) The owner or operator may amend the initial or any subsequent written retrofit plan at any time.

(B) The owner or operator must amend the written retrofit plan whenever:

(*1*) There is a change in the operation of the CCR unit that would substantially affect the written retrofit plan in effect; or

(*2*) Before or after retrofit activities have commenced, unanticipated events necessitate a revision of the written retrofit plan.

(C) The owner or operator must amend the retrofit plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the revision of an existing written retrofit plan. If a written retrofit plan is revised after retrofit activities have commenced for a CCR unit, the owner or operator must amend the current retrofit plan no later than 30 days following the triggering event.

(iv) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer or an approval from the Participating State Director or an approval

from EPA where EPA is the permitting authority that the activities outlined in the written retrofit plan, including any amendment of the plan, meet the requirements of this section.

(3) *Deadline for completion of activities related to the retrofit of a CCR unit.* Any CCR surface impoundment that is being retrofitted must complete all retrofit activities within the same time frames and procedures specified for the closure of a CCR surface impoundment in § 257.102(f) or, where applicable, § 257.103.

(4) Upon completion, the owner or operator must obtain a written certification from a qualified professional engineer or an approval from the Participating State Director or an approval from EPA where EPA is the permitting authority verifying that the retrofit activities have been completed in accordance with the retrofit plan specified in paragraph (k)(2) of this section and the requirements of this section.

(5) No later than the date the owner or operator initiates the retrofit of a CCR unit, the owner or operator must prepare a notification of intent to retrofit a CCR unit. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(j)(5).

(6) Within 30 days of completing the retrofit activities specified in paragraph (k)(1) of this section, the owner or operator must prepare a notification of completion of retrofit activities. The notification must include the certification from a qualified professional engineer or an approval from the Participating State Director or an approval from EPA where EPA is the permitting authority has is required by paragraph (k)(4) of this section. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(j)(6).

(7) At any time after the initiation of a CCR unit retrofit, the owner or operator may cease the retrofit and initiate closure of the CCR unit in accordance with the requirements of § 257.102.

(8) The owner or operator of the CCR unit must comply with the retrofit recordkeeping requirements specified in § 257.105(j), the retrofit notification requirements specified in § 257.106(j), and the retrofit Internet requirements specified in § 257.107(j).

[80 FR 21468, Apr. 17, 2015, as amended at 81 FR 51808, Aug. 5, 2016; 83 FR 36455, July 30, 2018; 85 FR 72542, Nov. 12, 2020]

§ 257.103 Alternative closure requirements.

The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit that is subject to closure pursuant to § 257.101(a), (b)(1), or (d) may nevertheless continue to receive the wastes specified in either paragraph (a), (b), (f)(1), or (f)(2) of this section in the unit provided the owner or operator meets all of the requirements contained in the respective paragraph.

(a) *CCR landfills*—(1) *No alternative CCR disposal capacity.* Notwithstanding the provisions of § 257.101(d), a CCR landfill may continue to recieve CCR if the owner or operator of the CCR landfill certifies that the CCR must continue to be managed in that CCR landfill due to the absence of alternative disposal capacity both on and off-site of the facility. To qualify under this paragraph, the owner or operator of the CCR landfill must document that all of the following conditions have been met:

(i) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section;

(ii) The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under this paragraph (a) lasts only as long as no alternative capacity is available. Once alternative capacity is identified, the owner or operator must arrange to use such capacity as soon as feasible;

(iii) The owner or operator must remain in compliance with all other requirements of this subpart, including the requirement to conduct any necessary corrective action; and

(iv) The owner or operator must prepare the annual progress report specified in paragraph (c) of this section

documenting the continued lack of alternative capacity and the progress towards the development of alternative CCR disposal capacity.

(2) Once alternative capacity is available, the CCR landfill must cease receiving CCR and initiate closure following the timeframes in § 257.102(e).

(3) If no alternative capacity is identified within five years after the initial certification, the CCR landfill must cease receiving CCR and close in accordance with the timeframes in § 257.102(e) and (f).

(b) *CCR landfills*—(1) *Permanent cessation of a coal-fired boiler(s) by a date certain.* Notwithstanding the provisions of § 257.101(d), a CCR landfill may continue to receive CCR if the owner or operator certifies that the facility will cease operation of the coal-fired boilers within the timeframe specified in paragraph (b)(4) of this section, but in the interim period (prior to closure of the coal-fired boiler), the facility must continue to use the CCR landfill due to the absence of alternative disposal capacity both on and off-site of the facility. To qualify under this paragraph, the owner or operator of the CCR landfill must document that all of the following conditions have been met:

(i) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section.

(ii) The owner or operator must remain in compliance with all other requirements of this subpart, including the requirement to conduct any necessary corrective action; and

(iii) The owner or operator must prepare the annual progress report specified in paragraph (c) of this section documenting the continued lack of alternative capacity and the progress towards the closure of the coal-fired boiler.

(2)–(3) [Reserved]

(4) For a CCR landfill, the coal-fired boiler must cease operation, and the CCR landfill must complete closure no later than April 19, 2021.

(c) *Required notices and progress reports for CCR landfills.* An owner or operator of a CCR landfill that closes in accordance with paragraph (a) or (b) of this section must complete the notices and progress reports specified in paragraphs (c)(1) through (3) of this section.

(1) Within six months of becoming subject to closure pursuant to § 257.101(d), the owner or operator must prepare and place in the facility's operating record a notification of intent to comply with the alternative closure requirements of this section. The notification must describe why the CCR landfill qualifies for the alternative closure provisions under either paragraph (a) or (b) of this section, in addition to providing the documentation and certifications required by paragraph (a) or (b) of this section.

(2) The owner or operator must prepare the periodic progress reports required by paragraph (a)(1)(iv) or (b)(1)(iii) of this section, in addition to describing any problems encountered and a description of the actions taken to resolve the problems. The annual progress reports must be completed according to the following schedule:

(i) The first annual progress report must be prepared no later than 13 months after completing the notification of intent to comply with the alternative closure requirements required by paragraph (c)(1) of this section.

(ii) The second annual progress report must be prepared no later than 12 months after completing the first annual progress report. Subsequent annual progress reports must be prepared within 12 months of completing the previous annual progress report.

(iii) The owner or operator has completed the progress reports specified in this paragraph (c)(2) when the reports are placed in the facility's operating record as required by § 257.105(i)(11).

(3) An owner or operator of a CCR landfill must also prepare the notification of intent to close a CCR landfill as required by § 257.102(g).

(d) *CCR landfill recordkeeping.* The owner or operator of the CCR landfill must comply with the recordkeeping requirements specified in § 257.105(i), the notification requirements specified in § 257.106(i), and the internet requirements specified in § 257.107(i).

(e) [Reserved]

(f) *Site-specific alternative deadlines to initiate closure of CCR surface impoundments.* Notwithstanding the provisions of § 257.101(a) and (b)(1), a CCR surface

impoundment may continue to receive the waste specified in paragraph (f)(1) or (2) of this section, provided the owner or operator submits a demonstration that the criteria in either paragraph (f)(1) or (2) of this section have been met. The demonstration must be submitted to the Administrator or the Participating State Director no later than the relevant deadline in paragraph (f)(3) of this section. The Administrator or the Participating State Director will act on the submission in accordance with the procedures in paragraph (f)(3) of this section.

(1) *Development of alternative capacity is technically infeasible.* Notwithstanding the provisions of § 257.101(a) and (b)(1), a CCR surface impoundment may continue to receive the waste specified in paragraph (f)(1)(ii)(A) or (B) of this section, provided the owner or operator demonstrates the wastestream(s) must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to provide alternative disposal capacity on or off-site of the facility by April 11, 2021. To obtain approval under this paragraph all of the following criteria must be met:

(i) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section;

(ii)(A) For units closing pursuant to § 257.101(a) and (b)(1)(i), CCR and/or non-CCR wastestreams must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to obtain alternative disposal capacity either on or off-site of the facility by April 11, 2021.

(B) For units closing pursuant to § 257.101(b)(1)(ii), CCR must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to obtain alternative disposal capacity either on or off-site of the facility by April 11, 2021.

(iii) The facility is in compliance with all of the requirements of this subpart.

(iv) The owner or operator of the CCR surface impoundment must submit documentation that the criteria in paragraphs (f)(1)(i) through (iii) of this section have been met by submitting to the Administrator or the Participating State Director all of the following:

(A) To demonstrate that the criteria in paragraphs (f)(1)(i) and (ii) of this section have been met the owner or operator must submit a workplan that contains all of the following elements:

(*1*) A written narrative discussing the options considered both on and off-site to obtain alternative capacity for each CCR and/or non-CCR wastestreams, the technical infeasibility of obtaining alternative capacity prior to April 11, 2021, and the option selected and justification for the alternative capacity selected. The narrative must also include all of the following:

(*i*) An in-depth analysis of the site and any site-specific conditions that led to the decision to select the alternative capacity being developed;

(*ii*) An analysis of the adverse impact to plant operations if the CCR surface impoundment in question were to no longer be available for use; and

(*iii*) A detailed explanation and justification for the amount of time being requested and how it is the fastest technically feasible time to complete the development of the alternative capacity;

(*2*) A detailed schedule of the fastest technically feasible time to complete the measures necessary for alternative capacity to be available including a visual timeline representation. The visual timeline must clearly show all of the following:

(*i*) How each phase and the steps within that phase interact with or are dependent on each other and the other phases;

(*ii*) All of the steps and phases that can be completed concurrently;

(*iii*) The total time needed to obtain the alternative capacity and how long each phase and step within each phase will take; and

(*iv*) At a minimum, the following phases: Engineering and design, contractor selection, equipment fabrication and delivery, construction, and start up and implementation.;

(*3*) A narrative discussion of the schedule and visual timeline representation, which must discuss all of the following:

(*i*) Why the length of time for each phase and step is needed and a discussion of the tasks that occur during the specific step;

(*ii*) Why each phase and step shown on the chart must happen in the order it is occurring;

(*iii*) The tasks that occur during each of the steps within the phase; and

(*iv*) Anticipated worker schedules; and

(*4*) A narrative discussion of the progress the owner or operator has made to obtain alternative capacity for the CCR and/or non-CCR wastestreams. The narrative must discuss all the steps taken, starting from when the owner or operator initiated the design phase up to the steps occurring when the demonstration is being compiled. It must discuss where the facility currently is on the timeline and the efforts that are currently being undertaken to develop alternative capacity.

(B) To demonstrate that the criteria in paragraph (f)(1)(iii) of this section have been met, the owner or operator must submit all of the following:

(*1*) A certification signed by the owner or operator that the facility is in compliance with all of the requirements of this subpart;

(*2*) Visual representation of hydrogeologic information at and around the CCR unit(s) that supports the design, construction and installation of the groundwater monitoring system. This includes all of the following:

(*i*) Map(s) of groundwater monitoring well locations in relation to the CCR unit(s);

(*ii*) Well construction diagrams and drilling logs for all groundwater monitoring wells; and

(*iii*) Maps that characterize the direction of groundwater flow accounting for seasonal variations;

(*3*) Constituent concentrations, summarized in table form, at each groundwater monitoring well monitored during each sampling event;

(*4*) A description of site hydrogeology including stratigraphic cross-sections;

(*5*) Any corrective measures assessment conducted as required at § 257.96;

(*6*) Any progress reports on corrective action remedy selection and design and the report of final remedy selection required at § 257.97(a);

(*7*) The most recent structural stability assessment required at § 257.73(d); and

(*8*) The most recent safety factor assessment required at § 257.73(e).

(v) As soon as alternative capacity for any CCR or non-CCR wastestream is available, the CCR surface impoundment must cease receiving that CCR or non-CCR wastestream. Once the CCR surface impoundment ceases receipt of all CCR and/or non-CCR wastestreams, the CCR surface impoundment must initiate closure following the timeframes in § 257.102(e) and (f).

(vi) *Maximum time frames.* All CCR surface impoundments covered by paragraph (f)(1) must cease receiving waste by the deadlines specified in paragraphs (f)(1)(vi)(A) and (B) of this section and close in accordance with the timeframes in § 257.102(e) and (f).

(A) Except as provided by paragraph (f)(1)(vi)(B) of this section, no later than October 15, 2023.

(B) An eligible unlined CCR surface impoundment must cease receiving CCR and/or non-CCR wastestreams no later than October 15, 2024. In order to continue to operate until October 15, 2024, the owner or operator must demonstrate that the unit meets the definition of an eligible unlined CCR surface impoundment.

(vii) An owner or operator may seek additional time beyond the time granted in the initial approval by making the showing in paragraphs (f)(1)(i) through (iv) of this section, provided that no facility may be granted time to operate the impoundment beyond the maximum allowable time frames provided in § 257.103(f)(1)(vi).

(viii) The owner or operator at all times bears responsibility for demonstrating qualification under this section. Failure to remain in compliance with any of the requirements of this subpart will result in the automatic loss of authorization under this section.

(ix) The owner or operator must:

(A) Upon submission of the demonstration to the Administrator or the Participating State Director, prepare and place in the facility's operating record a notification that it has submitted the demonstration, along with a copy of the demonstration. An owner or operator that claims CBI in the demonstration may post a redacted version of the demonstration to its publicly accessible CCR internet site provided that it contains sufficient detail so that the public can meaningfully comment on the demonstration.

(B) Upon receipt of a decision pursuant to paragraph (f)(3) of this section, must prepare and place in the facility's operating record a copy of the decision.

(C) If an extension of an approved deadline pursuant to paragraph (f)(1)(vii) of this section has been requested, place a copy of the request submitted to the Administrator or the Participating State Director in the facility's operating record.

(x) The owner or operator must prepare semi-annual progress reports. The semi-annual progress reports must contain all of the following elements:

(A) Discussion of the progress made to date in obtaining alternative capacity, including:

(*1*) Discussion of the current stage of obtaining the capacity in reference to the timeline required under paragraph (f)(1)(iv)(A) of this section;

(*2*) Discussion of whether the owner or operator is on schedule for obtaining alternative capacity;

(*3*) If the owner or operator is not on or ahead of schedule for obtaining alternative capacity, the following must be included:

(*i*) Discussion of any problems encountered, and a description of the actions taken or planned to resolve the problems and get back on schedule; and

(*ii*) Discussion of the goals for the next six months and major milestones to be achieved for obtaining alternative capacity; and

(B) Discussion of any planned operational changes at the facility.

(xi) The progress reports must be completed according to the following schedule:

(A) The semi-annual progress reports must be prepared no later than April 30 and October 31 of each year for the duration of the alternative cease receipt of waste deadline.

(B) The first semi-annual progress report must be prepared by whichever date, April 30 or October 31, is soonest after receiving approval from the Administrator or the Participating State Director; and

(C) The owner or operator has completed the progress reports specified in paragraph (f)(1)(x) of this section when the reports have been placed in the facility's operating record as required by § 257.105(i)(17).

(xii) The owner or operator must prepare the notification of intent to close a CCR surface impoundment as required by § 257.102(g).

(xiii) The owner or operator must comply with the recordkeeping requirements specified in § 257.105(i), the notification requirements specified in § 257.106(i), and the internet posting requirements in § 257.107(i).

(2) *Permanent cessation of a coal-fired boiler(s) by a date certain.* Notwithstanding the provisions of § 257.101(a), and (b)(1), a CCR surface impoundment may continue to receive CCR and/or non-CCR wastestreams if the facility will cease operation of the coal-fired boiler(s) and complete closure of the impoundment within the timeframes specified in paragraph (f)(2)(iv) of this section, but in the interim period (prior to closure of the coal-fired boiler), the facility must continue to use the CCR surface impoundment due to the absence of alternative disposal capacity both on and off-site of the facility. To qualify under this paragraph all of the following criteria must be met:

(i) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section.

(ii) Potential risks to human health and the environment from the continued operation of the CCR surface impoundment have been adequately mitigated;

(iii) The facility is in compliance with all other requirements of this subpart, including the requirement to conduct any necessary corrective action; and

(iv) The coal-fired boilers must cease operation and closure of the impoundment must be completed within the following timeframes:

(A) For a CCR surface impoundment that is 40 acres or smaller, the coal-fired boiler(s) must cease operation and the CCR surface impoundment must complete closure no later than October 17, 2023.

(B) For a CCR surface impoundment that is larger than 40 acres, the coal-fired boiler(s) must cease operation, and the CCR surface impoundment must complete closure no later than October 17, 2028.

(v) The owner or operator of the CCR surface impoundment must submit the following documentation that the criteria in paragraphs (f)(2)(i) through (iv) of this section have been met as specified in paragraphs (f)(2)(v)(A) through (D) of this section.

(A) To demonstrate that the criteria in paragraph (f)(2)(i) of this section have been met the owner or operator must submit a narrative that explains the options considered to obtain alternative capacity for CCR and/or non-CCR wastestreams both on and off-site.

(B) To demonstrate that the criteria in paragraph (f)(2)(ii) of this section have been met the owner or operator must submit a risk mitigation plan describing the measures that will be taken to expedite any required corrective action, and that contains all of the following elements:

(*1*) A discussion of any physical or chemical measures a facility can take to limit any future releases to groundwater during operation.

(*2*) A discussion of the surface impoundment's groundwater monitoring data and any found exceedances; the delineation of the plume (if necessary based on the groundwater monitoring data); identification of any nearby receptors that might be exposed to current or future groundwater contamination; and how such exposures could be promptly mitigated.

(*3*) A plan to expedite and maintain the containment of any contaminant plume that is either present or identified during continued operation of the unit.

(C) To demonstrate that the criteria in paragraph (f)(2)(iii) of this section have been met, the owner or operator must submit all of the following:

(*1*) A certification signed by the owner or operator that the facility is in compliance with all of the requirements of this subpart;

(*2*) Visual representation of hydrogeologic information at and around the CCR unit(s) that supports the design, construction and installation of the groundwater monitoring system. This includes all of the following:

(*i*) Map(s) of groundwater monitoring well locations in relation to the CCR unit;

(*ii*) Well construction diagrams and drilling logs for all groundwater monitoring wells; and

(*iii*) Maps that characterize the direction of groundwater flow accounting for seasonal variations;

(*3*) Constituent concentrations, summarized in table form, at each groundwater monitoring well monitored during each sampling event;

(*4*) Description of site hydrogeology including stratigraphic cross-sections;

(*5*) Any corrective measures assessment required at § 257.96;

(*6*) Any progress reports on remedy selection and design and the report of final remedy selection required at § 257.97(a);

(*7*) The most recent structural stability assessment required at § 257.73(d); and

(*8*) The most recent safety factor assessment required at § 257.73(e).

(D) To demonstrate that the criteria in paragraph (f)(2)(iv) of this section have been met, the owner or operator must submit the closure plan required by § 257.102(b) and a narrative that specifies and justifies the date by which they intend to cease receipt of waste into the unit in order to meet the closure deadlines.

(vi) The owner or operator at all times bears responsibility for demonstrating qualification for authorization under this section. Failure to remain in compliance with any of the requirements of this subpart will result in the automatic loss of authorization under this section.

(vii) The owner or operator must comply with the recordkeeping requirements specified in § 257.105(i), the

notification requirements specified in § 257.106(i), and the internet posting requirements in § 257.107(i).

(viii) Upon submission of the demonstration to the Administrator or the Participating State Director the owner or operator must prepare and place in the facility's operating record and on its publicly accessible CCR internet site a notification that is has submitted a demonstration along with a copy of the demonstration.

(ix) Upon receipt of a decision pursuant to paragraph (f)(3) of this section, the owner or operator must place a copy of the decision in the facility's operating record and on the facility's publicly accessible CCR internet site.

(x) The owner or operator must prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the closure of the CCR surface impoundment. The owner or operator has completed the progress report when the report has been placed in the facility's operating record as required by § 257.105(i)(20).

(3) *Process to Obtain Authorization.* (i) *Deadlines for Submission.* (A) Except as provided by § 257.71(d)(2)(iii)(E) and (viii), the owner or operator must submit the demonstration required under paragraph (f)(1)(iv) of this section, for an alternative deadline to cease receipt of waste pursuant to paragraph (f)(1) of this section, to the Administrator or the Participating State Director for approval no later than November 30, 2020.

(B) An owner or operator may seek additional time beyond the time granted in the initial approval, in accordance with paragraph (f)(1)(vii) of this section, by submitting a new demonstration, as required under paragraph (f)(1)(iv) of this section, to the Administrator or the Participating State Director for approval, no later than fourteen days from determining that the cease receipt of waste deadline will not be met.

(C) Except as provided by § 257.71(d)(2)(iii)(E) and (viii), the owner or operator must submit the demonstration required under paragraph (f)(2)(v) of this section to the Administrator for approval no later than November 30, 2020.

(ii) EPA will evaluate the demonstration and may request additional information to complete its review. Submission of a complete demonstration will toll the facility's deadline to cease receipt of waste until issuance of a decision under paragraph (f)(3)(iv) of this section. Incomplete submissions will not toll the facility's deadline and will be rejected without further process. All decisions issued under this paragraph or paragraph (f)(3)(iv) of this section will contain the facility's deadline to cease receipt of waste.

(iii) EPA will publish its proposed decision on a complete demonstration in a docket on *www.regulations.gov* for a 15-day comment period. If the demonstration is particularly complex, EPA will provide a comment period of 20 to 30 days.

(iv) After consideration of the comments, EPA will issue its decision on the alternative compliance deadline within four months of receiving a complete demonstration.

(4) *Transferring between site-specific alternatives.* An owner or operator authorized to continue operating a CCR surface impoundment under this section may at any time request authorization to continue operating the impoundment pursuant to another paragraph of subsection (f), by submitting the information in paragraph (f)(4)(i) or (ii) of this section.

(i) *Transfer from § 257.103(f)(1) to § 257.103(f)(2).* The owner or operator of a surface impoundment authorized to operate pursuant to paragraph (f)(1) of this section may request authorization to instead operate the surface impoundment in accordance with the requirements of paragraph (f)(2) of this section, by submitting a new demonstration that meets the requirements of paragraph (f)(2)(v) of this section to the Administrator or the Participating State Director. EPA will approve the request only upon determining that the criteria at paragraphs (f)(2)(i) through (iv) have been met.

(ii) *Transfer from § 257.103(f)(2) to § 257.103(f)(1).* The owner or operator of a surface impoundment authorized to operate pursuant to paragraph (f)(2) of this section may request authorization

to instead operate the surface impoundment in accordance with the requirements of paragraph (f)(1) of this section, by submitting a new demonstration that meets the requirements of paragraph (f)(1)(iv) of this section to the Administrator or the Participating State Director. EPA will approve the request only upon determining that the criteria at paragraphs (f)(1)(i) through (iii) and (vi) of this section have been met.

(iii) The procedures in paragraph (f)(3) of this section will apply to all requests for transfer under this paragraph.

[85 FR 53561, Aug. 28, 2020, as amended at 85 FR 72542, Nov. 12, 2020]

§ 257.104 Post-closure care requirements.

(a) *Applicability*. (1) Except as provided by paragraph (a)(2) of this section, § 257.104 applies to the owners or operators of CCR landfills, CCR surface impoundments, and all lateral expansions of CCR units that are subject to the closure criteria under § 257.102.

(2) An owner or operator of a CCR unit that elects to close a CCR unit by removing CCR as provided by § 257.102(c) is not subject to the post-closure care criteria under this section.

(b) *Post-closure care maintenance requirements*. Following closure of the CCR unit, the owner or operator must conduct post-closure care for the CCR unit, which must consist of at least the following:

(1) Maintaining the integrity and effectiveness of the final cover system, including making repairs to the final cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) If the CCR unit is subject to the design criteria under § 257.70, maintaining the integrity and effectiveness of the leachate collection and removal system and operating the leachate collection and removal system in accordance with the requirements of § 257.70; and

(3) Maintaining the groundwater monitoring system and monitoring the groundwater in accordance with the requirements of §§ 257.90 through 257.98.

(c) *Post-closure care period*. (1) Except as provided by paragraph (c)(2) of this section, the owner or operator of the CCR unit must conduct post-closure care for 30 years.

(2) If at the end of the post-closure care period the owner or operator of the CCR unit is operating under assessment monitoring in accordance with § 257.95, the owner or operator must continue to conduct post-closure care until the owner or operator returns to detection monitoring in accordance with § 257.95.

(d) *Written post-closure plan*—(1) *Content of the plan*. The owner or operator of a CCR unit must prepare a written post-closure plan that includes, at a minimum, the information specified in paragraphs (d)(1)(i) through (iii) of this section.

(i) A description of the monitoring and maintenance activities required in paragraph (b) of this section for the CCR unit, and the frequency at which these activities will be performed;

(ii) The name, address, telephone number, and email address of the person or office to contact about the facility during the post-closure care period; and

(iii) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other component of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this subpart. Any other disturbance is allowed if the owner or operator of the CCR unit demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of CCR, will not increase the potential threat to human health or the environment. The demonstration must be certified by a qualified professional engineer or approved by the Participating State Director or approved from EPA where EPA is the permitting authority, and notification shall be provided to the State Director that the demonstration has been placed in the operating record and on the owners or operator's publicly accessible internet site.

(2) *Deadline to prepare the initial written post-closure plan*—(i) *Existing CCR landfills and existing CCR surface impoundments*. No later than October 17, 2016, the owner or operator of the CCR unit must prepare an initial written post-closure plan consistent with the requirements specified in paragraph (d)(1) of this section.

(ii) *New CCR landfills, new CCR surface impoundments, and any lateral expansion of a CCR unit*. No later than the date of the initial receipt of CCR in the CCR unit, the owner or operator must prepare an initial written post-closure plan consistent with the requirements specified in paragraph (d)(1) of this section.

(iii) The owner or operator has completed the written post-closure plan when the plan, including the certification required by paragraph (d)(4) of this section, has been placed in the facility's operating record as required by § 257.105(i)(4).

(3) *Amendment of a written post-closure plan*. (i) The owner or operator may amend the initial or any subsequent written post-closure plan developed pursuant to paragraph (d)(1) of this section at any time.

(ii) The owner or operator must amend the written closure plan whenever:

(A) There is a change in the operation of the CCR unit that would substantially affect the written post-closure plan in effect; or

(B) After post-closure activities have commenced, unanticipated events necessitate a revision of the written post-closure plan.

(iii) The owner or operator must amend the written post-closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written post-closure plan. If a written post-closure plan is revised after post-closure activities have commenced for a CCR unit, the owner or operator must amend the written post-closure plan no later than 30 days following the triggering event.

(4) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer or an approval from the Participating State Director or an approval from EPA where EPA is the permitting authority that the initial and any amendment of the written post-closure plan meets the requirements of this section.

(e) *Notification of completion of post-closure care period*. No later than 60 days following the completion of the post-closure care period, the owner or operator of the CCR unit must prepare a notification verifying that post-closure care has been completed. The notification must include the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority verifying that post-closure care has been completed in accordance with the closure plan specified in paragraph (d) of this section and the requirements of this section. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(13).

(f) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in § 257.105(i), the notification requirements specified in § 257.106(i), and the Internet requirements specified in § 257.107(i).

[80 FR 21468, Apr. 17, 2015, as amended at 81 FR 51808, Aug. 5, 2016; 83 FR 36455, July 30, 2018]

RECORDKEEPING, NOTIFICATION, AND POSTING OF INFORMATION TO THE INTERNET

§ 257.105 Recordkeeping requirements.

(a) Each owner or operator of a CCR unit subject to the requirements of this subpart must maintain files of all information required by this section in a written operating record at their facility.

(b) Unless specified otherwise, each file must be retained for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, record, or study.

(c) An owner or operator of more than one CCR unit subject to the provisions of this subpart may comply with the requirements of this section in one

recordkeeping system provided the system identifies each file by the name of each CCR unit. The files may be maintained on microfilm, on a computer, on computer disks, on a storage system accessible by a computer, on magnetic tape disks, or on microfiche.

(d) The owner or operator of a CCR unit must submit to the State Director and/or appropriate Tribal authority any demonstration or documentation required by this subpart, if requested, when such information is not otherwise available on the owner or operator's publicly accessible Internet site.

(e) *Location restrictions.* The owner or operator of a CCR unit subject to this subpart must place the demonstrations documenting whether or not the CCR unit is in compliance with the requirements under §§ 257.60(a), 257.61(a), 257.62(a), 257.63(a), and 257.64(a), as it becomes available, in the facility's operating record.

(f) *Design criteria.* The owner or operator of a CCR unit subject to this subpart must place the following information, as it becomes available, in the facility's operating record:

(1) The design and construction certifications as required by § 257.70(e) and (f).

(2) The documentation of liner type as required by § 257.71(a).

(3) The design and construction certifications as required by § 257.72(c) and (d).

(4) Documentation prepared by the owner or operator stating that the permanent identification marker was installed as required by §§ 257.73(a)(1) and 257.74(a)(1).

(5) The initial and periodic hazard potential classification assessments as required by §§ 257.73(a)(2) and 257.74(a)(2).

(6) The emergency action plan (EAP), and any amendment of the EAP, as required by §§ 257.73(a)(3) and 257.74(a)(3), except that only the most recent EAP must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this section.

(7) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders as required by §§ 257.73(a)(3)(i)(E) and 257.74(a)(3)(i)(E).

(8) Documentation prepared by the owner or operator recording all activations of the emergency action plan as required by §§ 257.73(a)(3)(v) and 257.74(a)(3)(v).

(9) The history of construction, and any revisions of it, as required by § 257.73(c), except that these files must be maintained until the CCR unit completes closure of the unit in accordance with § 257.102.

(10) The initial and periodic structural stability assessments as required by §§ 257.73(d) and 257.74(d).

(11) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by §§ 257.73(d)(2) and 257.74(d)(2).

(12) The initial and periodic safety factor assessments as required by §§ 257.73(e) and 257.74(e).

(13) The design and construction plans, and any revisions of it, as required by § 257.74(c), except that these files must be maintained until the CCR unit completes closure of the unit in accordance with § 257.102.

(14) The application and any supplemental materials submitted in support of the application as required by § 257.71(d)(1)(i)(E).

(15) The alternative liner demonstration as required by § 257.71(d)(1)(ii)(D).

(16) The alternative liner demonstration extension request as required by § 257.71(d)(2)(ii)(D).

(17) The documentation prepared for the preliminary demonstration as required by § 257.71(d)(2)(ii)(E).

(18) The notification of an incomplete application as required by § 257.71(d)(2)(iii)(B).

(19) The decision on the application as required by § 257.71(d)(2)(iii)(F).

(20) The final decision on the alternative liner demonstration as required by § 257.71(d)(2)(vii).

(21) The alternative source demonstration as required under § 257.71(d)(2)(ix)(A)(*4*).

(22) The final decision on the alternative source demonstration as required under § 257.71(d)(2)(ix)(A)(*5*).

(23) The final decision on the trend analysis as required under § 257.71(d)(2)(ix)(B)(*3*).

(24) The decision that the alternative source demonstration has been withdrawn as required under § 257.71(d)(2)(ix)(C).

(g) *Operating criteria.* The owner or operator of a CCR unit subject to this subpart must place the following information, as it becomes available, in the facility's operating record:

(1) The CCR fugitive dust control plan, and any subsequent amendment of the plan, required by § 257.80(b), except that only the most recent control plan must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this section.

(2) The annual CCR fugitive dust control report required by § 257.80(c).

(3) The initial and periodic run-on and run-off control system plans as required by § 257.81(c).

(4) The initial and periodic inflow design flood control system plan as required by § 257.82(c).

(5) Documentation recording the results of each inspection and instrumentation monitoring by a qualified person as required by § 257.83(a).

(6) The periodic inspection report as required by § 257.83(b)(2).

(7) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by §§ 257.83(b)(5) and 257.84(b)(5).

(8) Documentation recording the results of the weekly inspection by a qualified person as required by § 257.84(a).

(9) The periodic inspection report as required by § 257.84(b)(2).

(h) *Groundwater monitoring and corrective action.* The owner or operator of a CCR unit subject to this subpart must place the following information, as it becomes available, in the facility's operating record:

(1) The annual groundwater monitoring and corrective action report as required by § 257.90(e).

(2) Documentation of the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices as required by § 257.91(e)(1).

(3) The groundwater monitoring system certification as required by § 257.91(f).

(4) The selection of a statistical method certification as required by § 257.93(f)(6).

(5) Within 30 days of establishing an assessment monitoring program, the notification as required by § 257.94(e)(3).

(6) The results of appendices III and IV to this part constituent concentrations as required by § 257.95(d)(1).

(7) Within 30 days of returning to a detection monitoring program, the notification as required by § 257.95(e).

(8) Within 30 days of detecting one or more constituents in appendix IV to this part at statistically significant levels above the groundwater protection standard, the notifications as required by § 257.95(g).

(9) Within 30 days of initiating the assessment of corrective measures requirements, the notification as required by § 257.95(g)(5).

(10) The completed assessment of corrective measures as required by § 257.96(d).

(11) Documentation prepared by the owner or operator recording the public meeting for the corrective measures assessment as required by § 257.96(e).

(12) The semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report as required by § 257.97(a), except that the selection of remedy report must be maintained until the remedy has been completed.

(13) Within 30 days of completing the remedy, the notification as required by § 257.98(e).

(14) The demonstration, including long-term performance data, supporting the suspension of groundwater monitoring requirements as required by § 257.90(g).

(i) *Closure and post-closure care.* The owner or operator of a CCR unit subject to this subpart must place the following information, as it becomes available, in the facility's operating record:

(1) The notification of intent to initiate closure of the CCR unit as required by § 257.100(c)(1).

(2) The annual progress reports of closure implementation as required by § 257.100(c)(2)(i) and (ii).

(3) The notification of closure completion as required by § 257.100(c)(3).

(4) The written closure plan, and any amendment of the plan, as required by § 257.102(b), except that only the most recent closure plan must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this section.

(5) The written demonstration(s), including the certification required by § 257.102(e)(2)(iii), for a time extension for initiating closure as required by § 257.102(e)(2)(ii).

(6) The written demonstration(s), including the certification required by § 257.102(f)(2)(iii), for a time extension for completing closure as required by § 257.102(f)(2)(i).

(7) The notification of intent to close a CCR unit as required by § 257.102(g).

(8) The notification of completion of closure of a CCR unit as required by § 257.102(h).

(9) The notification recording a notation on the deed as required by § 257.102(i).

(10) The notification of intent to comply with the alternative closure requirements as required by § 257.103(c)(1).

(11) The annual progress reports under the alternative closure requirements as required by § 257.103(c)(2).

(12) The written post-closure plan, and any amendment of the plan, as required by § 257.104(d), except that only the most recent closure plan must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this section.

(13) The notification of completion of post-closure care period as required by § 257.104(e).

(14) The notification of intent to comply with the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by § 257.103(f)(1)(ix)(A).

(15) The approved or denied demonstration for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by § 257.103(f)(1)(ix)(B).

(16) The notification for requesting additional time to the alternative cease receipt of waste deadline as required by § 257.103(f)(1)(ix)(C).

(17) The semi-annual progress reports for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by § 257.103(f)(1)(xi).

(18) The notification of intent to comply with the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.103(f)(2)(viii).

(19) The approved or denied demonstration for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.103(f)(2)(ix).

(20) The annual progress report for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.103(f)(2)(x).

(j) *Retrofit criteria.* The owner or operator of a CCR unit subject to this subpart must place the following information, as it becomes available, in the facility's operating record:

(1) The written retrofit plan, and any amendment of the plan, as required by § 257.102(k)(2), except that only the most recent retrofit plan must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this section.

(2) The notification of intent that the retrofit activities will proceed in accordance with the alternative procedures in § 257.103.

(3) The annual progress reports required under the alternative requirements as required by § 257.103.

(4) The written demonstration(s), including the certification in § 257.102(f)(2)(iii), for a time extension for completing retrofit activities as required by § 257.102(k)(3).

(5) The notification of intent to initiate retrofit of a CCR unit as required by § 257.102(k)(5).

(6) The notification of completion of retrofit activities as required by § 257.102(k)(6).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36456, July 30, 2018; 85 FR 53565, Aug. 28, 2020; 85 FR 72543, Nov. 12, 2020; 85 FR 80626, Dec. 14, 2020]

§ 257.106 Notification requirements.

(a) The notifications required under paragraphs (e) through (i) of this section must be sent to the relevant State Director and/or appropriate Tribal authority before the close of business on the day the notification is required to be completed. For purposes of this section, *before the close of business* means the notification must be postmarked or sent by electronic mail (email). If a notification deadline falls on a weekend or federal holiday, the notification deadline is automatically extended to the next business day.

(b) If any CCR unit is located in its entirety within Indian Country, the notifications of this section must be sent to the appropriate Tribal authority. If any CCR unit is located in part within Indian Country, the notifications of this section must be sent both to the appropriate State Director and Tribal authority.

(c) Notifications may be combined as long as the deadline requirement for each notification is met.

(d) Unless otherwise required in this section, the notifications specified in this section must be sent to the State Director and/or appropriate Tribal authority within 30 days of placing in the operating record the information required by § 257.105.

(e) *Location restrictions.* The owner or operator of a CCR unit subject to the requirements of this subpart must notify the State Director and/or appropriate Tribal authority that each demonstration specified under § 257.105(e) has been placed in the operating record and on the owner or operator's publicly accessible internet site.

(f) *Design criteria.* The owner or operator of a CCR unit subject to this subpart must notify the State Director and/or appropriate Tribal authority when information has been placed in the operating record and on the owner or operator's publicly accessible internet site. The owner or operator must:

(1) Within 60 days of commencing construction of a new CCR unit, provide notification of the availability of the design certification specified under § 257.105(f)(1) or (3). If the owner or operator of the CCR unit elects to install an alternative composite liner, the owner or operator must also submit to the State Director and/or appropriate Tribal authority a copy of the alternative composite liner design.

(2) No later than the date of initial receipt of CCR by a new CCR unit, provide notification of the availability of the construction certification specified under § 257.105(f)(1) or (3).

(3) Provide notification of the availability of the documentation of liner type specified under § 257.105(f)(2).

(4) Provide notification of the availability of the initial and periodic hazard potential classification assessments specified under § 257.105(f)(5).

(5) Provide notification of the availability of emergency action plan (EAP), and any revisions of the EAP, specified under § 257.105(f)(6).

(6) Provide notification of the availability of documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders specified under § 257.105(f)(7).

(7) Provide notification of documentation prepared by the owner or operator recording all activations of the emergency action plan specified under § 257.105(f)(8).

(8) Provide notification of the availability of the history of construction, and any revision of it, specified under § 257.105(f)(9).

(9) Provide notification of the availability of the initial and periodic structural stability assessments specified under § 257.105(f)(10).

(10) Provide notification of the availability of the documentation detailing the corrective measures taken to remedy the deficiency or release specified under § 257.105(f)(11).

(11) Provide notification of the availability of the initial and periodic safety factor assessments specified under § 257.105(f)(12).

(12) Provide notification of the availability of the design and construction plans, and any revision of them, specified under § 257.105(f)(13).

(13) Provide notification of the availability of the application and any supplemental materials submitted in support of the application specified under § 257.105(f)(14).

(14) Provide notification of the availability of the alternative liner demonstration specified under § 257.105(f)(15).

(15) Provide notification of the availability of the alternative liner demonstration extension request specified under § 257.105(f)(16).

(16) Provide notification of the availability of the documentation prepared for the preliminary demonstration specified under § 257.105(f)(17).

(17) Provide notification of the availability of the notification of an incomplete application specified under § 257.105(f)(18).

(18) Provide notification of the availability of the decision on the application specified under § 257.105(f)(19).

(19) Provide notification of the availability of the final decision on the alternative liner demonstration specified under § 257.105(f)(20).

(20) Provide notification of the availability of the alternative source demonstration specified under § 257.105(f)(21).

(21) Provide notification of the availability of the final decision on the alternative source demonstration specified under § 257.105(f)(22).

(22) Provide notification of the final decision on the trend analysis specified under § 257.105(f)(23).

(23) Provide notification of the decision that the alternative source demonstration has been withdrawn specified under § 257.105(f)(24).

(g) *Operating criteria*. The owner or operator of a CCR unit subject to this subpart must notify the State Director and/or appropriate Tribal authority when information has been placed in the operating record and on the owner or operator's publicly accessible internet site. The owner or operator must:

(1) Provide notification of the availability of the CCR fugitive dust control plan, or any subsequent amendment of the plan, specified under § 257.105(g)(1).

(2) Provide notification of the availability of the annual CCR fugitive dust control report specified under § 257.105(g)(2).

(3) Provide notification of the availability of the initial and periodic run-on and run-off control system plans specified under § 257.105(g)(3).

(4) Provide notification of the availability of the initial and periodic inflow design flood control system plans specified under § 257.105(g)(4).

(5) Provide notification of the availability of the periodic inspection reports specified under § 257.105(g)(6).

(6) Provide notification of the availability of the documentation detailing the corrective measures taken to remedy the deficiency or release specified under § 257.105(g)(7).

(7) Provide notification of the availability of the periodic inspection reports specified under § 257.105(g)(9).

(h) *Groundwater monitoring and corrective action*. The owner or operator of a CCR unit subject to this subpart must notify the State Director and/or appropriate Tribal authority when information has been placed in the operating record and on the owner or operator's publicly accessible internet site. The owner or operator must:

(1) Provide notification of the availability of the annual groundwater monitoring and corrective action report specified under § 257.105(h)(1).

(2) Provide notification of the availability of the groundwater monitoring system certification specified under § 257.105(h)(3).

(3) Provide notification of the availability of the selection of a statistical method certification specified under § 257.105(h)(4).

(4) Provide notification that an assessment monitoring programs has been established specified under § 257.105(h)(5).

(5) Provide notification that the CCR unit is returning to a detection monitoring program specified under § 257.105(h)(7).

(6) Provide notification that one or more constituents in appendix IV to this part have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under § 257.105(h)(8).

(7) Provide notification that an assessment of corrective measures has been initiated specified under § 257.105(h)(9).

(8) Provide notification of the availability of assessment of corrective measures specified under § 257.105(h)(10).

(9) Provide notification of the availability of the semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report specified under § 257.105(h)(12).

(10) Provide notification of the completion of the remedy specified under § 257.105(h)(13).

(11) Provide the demonstration supporting the suspension of groundwater monitoring requirements specified under § 257.105(h)(14).

(i) *Closure and post-closure care.* The owner or operator of a CCR unit subject to this subpart must notify the State Director and/or appropriate Tribal authority when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator must:

(1) Provide notification of the intent to initiate closure of the CCR unit specified under § 257.105(i)(1).

(2) Provide notification of the availability of the annual progress reports of closure implementation specified under § 257.105(i)(2).

(3) Provide notification of closure completion specified under § 257.105(i)(3).

(4) Provide notification of the availability of the written closure plan, and any amendment of the plan, specified under § 257.105(i)(4).

(5) Provide notification of the availability of the demonstration(s) for a time extension for initiating closure specified under § 257.105(i)(5).

(6) Provide notification of the availability of the demonstration(s) for a time extension for completing closure specified under § 257.105(i)(6).

(7) Provide notification of intent to close a CCR unit specified under § 257.105(i)(7).

(8) Provide notification of completion of closure of a CCR unit specified under § 257.105(i)(8).

(9) Provide notification of the deed notation as required by § 257.105(i)(9).

(10) Provide notification of intent to comply with the alternative closure requirements specified under § 257.105(i)(10).

(11) The annual progress reports under the alternative closure requirements as required by § 257.105(i)(11).

(12) Provide notification of the availability of the written post-closure plan, and any amendment of the plan, specified under § 257.105(i)(12).

(13) Provide notification of completion of post-closure care specified under § 257.105(i)(13).

(14) Provide the notification of intent to comply with the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under § 257.105(i)(14).

(15) Provide the approved or denied demonstration for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by as specified under § 257.105(i)(15).

(16) Provide the notification for requesting additional time to the alternative cease receipt of waste deadline as required by § 257.105(i)(16).

(17) The semi-annual progress reports for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under § 257.105(i)(17).

(18) Provide the notification of intent to comply with the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as specified under § 257.105(i)(18).

(19) Provide the approved or denied demonstration for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.105(i)(19).

(20) The annual progress report for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.105(i)(20).

(j) *Retrofit criteria.* The owner or operator of a CCR unit subject to this subpart must notify the State Director and/or appropriate Tribal authority when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator must:

(1) Provide notification of the availability of the written retrofit plan, and any amendment of the plan, specified under § 257.105(j)(1).

(2) Provide notification of intent to comply with the alternative retrofit requirements specified under § 257.105(j)(2).

(3) The annual progress reports under the alternative retrofit requirements as required by § 257.105(j)(3).

(4) Provide notification of the availability of the demonstration(s) for a time extension for completing retrofit activities specified under § 257.105(j)(4).

(5) Provide notification of intent to initiate retrofit of a CCR unit specified under § 257.105(j)(5).

(6) Provide notification of completion of retrofit activities specified under § 257.105(j)(6).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36456, July 30, 2018; 85 FR 53565, Aug. 28, 2020; 85 FR 72543, Nov. 12, 2020]

§ 257.107 Publicly accessible Internet site requirements.

(a) Each owner or operator of a CCR unit subject to the requirements of this subpart must maintain a publicly accessible internet site (CCR website) containing the information specified in this section. The owner or operator's website must be titled ''CCR Rule Compliance Data and Information.'' The website must ensure that all information required to be posted is immediately available to anyone visiting the site, without requiring any prerequisite, such as registration or a requirement to submit a document request. All required information must be clearly identifiable and must be able to be immediately printed and downloaded by anyone accessing the site. If the owner/operator changes the web address (*i.e.*, Uniform Resource Locator (URL)) at any point, they must notify EPA via the ''contact us'' form on EPA's CCR website and the state director within 14 days of making the change. The facility's CCR website must also have a ''contact us'' form or a specific email address posted on the website for the public to use to submit questions and issues relating to the availability of information on the website.

(b) An owner or operator of more than one CCR unit subject to the provisions of this subpart may comply with the requirements of this section by using the same Internet site for multiple CCR units provided the CCR Web site clearly delineates information by the name or identification number of each unit.

(c) Unless otherwise required in this section, the information required to be posted to the CCR Web site must be made available to the public for at least five years following the date on which the information was first posted to the CCR Web site.

(d) Unless otherwise required in this section, the information must be posted to the CCR Web site within 30 days of placing the pertinent information required by § 257.105 in the operating record.

(e) *Location restrictions.* The owner or operator of a CCR unit subject to this subpart must place each demonstration specified under § 257.105(e) on the owner or operator's CCR Web site.

(f) *Design criteria.* The owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator's CCR Web site:

(1) Within 60 days of commencing construction of a new unit, the design certification specified under § 257.105(f)(1) or (3).

(2) No later than the date of initial receipt of CCR by a new CCR unit, the construction certification specified under § 257.105(f)(1) or (3).

(3) The documentation of liner type specified under § 257.105(f)(2).

(4) The initial and periodic hazard potential classification assessments specified under § 257.105(f)(5).

(5) The emergency action plan (EAP) specified under § 257.105(f)(6), except that only the most recent EAP must be maintained on the CCR Web site irrespective of the time requirement specified in paragraph (c) of this section.

(6) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders specified under § 257.105(f)(7).

(7) Documentation prepared by the owner or operator recording any activation of the emergency action plan specified under § 257.105(f)(8).

(8) The history of construction, and any revisions of it, specified under § 257.105(f)(9).

(9) The initial and periodic structural stability assessments specified under § 257.105(f)(10).

(10) The documentation detailing the corrective measures taken to remedy the deficiency or release specified under § 257.105(f)(11).

(11) The initial and periodic safety factor assessments specified under § 257.105(f)(12).

(12) The design and construction plans, and any revisions of them, specified under § 257.105(f)(13).

(13) The application and any supplemental materials submitted in support of the application specified under § 257.105(f)(14).

(14) The alternative liner demonstration specified under § 257.105(f)(15).

(15) The alternative liner demonstration specified under § 257.105(f)(16).

(16) The documentation prepared for the preliminary demonstration specified under § 257.105(f)(17).

(17) The notification of an incomplete application specified under § 257.105(f)(18).

(18) The decision on the application specified under § 257.105(f)(19).

(19) The final decision on the alternative liner demonstration specified under § 257.105(f)(20).

(20) The alternative source demonstration specified under § 257.105(f)(21).

(21) The final decision on the alternative source demonstration specified under § 257.105(f)(22).

(22) The final decision on the trend analysis specified under § 257.105(f)(23).

(23) The decision that the alternative source demonstration has been withdrawn specified under § 257.105(f)(24).

(g) *Operating criteria*. The owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator's CCR Web site:

(1) The CCR fugitive dust control plan, or any subsequent amendment of the plan, specified under § 257.105(g)(1) except that only the most recent plan must be maintained on the CCR Web site irrespective of the time requirement specified in paragraph (c) of this section.

(2) The annual CCR fugitive dust control report specified under § 257.105(g)(2).

(3) The initial and periodic run-on and run-off control system plans specified under § 257.105(g)(3).

(4) The initial and periodic inflow design flood control system plans specified under § 257.105(g)(4).

(5) The periodic inspection reports specified under § 257.105(g)(6).

(6) The documentation detailing the corrective measures taken to remedy the deficiency or release specified under § 257.105(g)(7).

(7) The periodic inspection reports specified under § 257.105(g)(9).

(h) *Groundwater monitoring and corrective action*. The owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator's CCR Web site:

(1) The annual groundwater monitoring and corrective action report specified under § 257.105(h)(1).

(2) The groundwater monitoring system certification specified under § 257.105(h)(3).

(3) The selection of a statistical method certification specified under § 257.105(h)(4).

(4) The notification that an assessment monitoring programs has been established specified under § 257.105(h)(5).

(5) The notification that the CCR unit is returning to a detection monitoring program specified under § 257.105(h)(7).

(6) The notification that one or more constituents in appendix IV to this part have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under § 257.105(h)(8).

(7) The notification that an assessment of corrective measures has been initiated specified under § 257.105(h)(9).

(8) The assessment of corrective measures specified under § 257.105(h)(10).

(9) The semiannual reports describing the progress in selecting and designing remedy and the selection of remedy report specified under § 257.105(h)(12), except that the selection of the remedy report must be maintained until the remedy has been completed.

(10) The notification that the remedy has been completed specified under § 257.105(h)(13).

(11) The demonstration supporting the suspension of groundwater monitoring requirements specified under § 257.105(h)(14).

(i) *Closure and post-closure care.* The owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator's CCR Web site:

(1) The notification of intent to initiate closure of the CCR unit specified under § 257.105(i)(1).

(2) The annual progress reports of closure implementation specified under § 257.105(i)(2).

(3) The notification of closure completion specified under § 257.105(i)(3).

(4) The written closure plan, and any amendment of the plan, specified under § 257.105(i)(4).

(5) The demonstration(s) for a time extension for initiating closure specified under § 257.105(i)(5).

(6) The demonstration(s) for a time extension for completing closure specified under § 257.105(i)(6).

(7) The notification of intent to close a CCR unit specified under § 257.105(i)(7).

(8) The notification of completion of closure of a CCR unit specified under § 257.105(i)(8).

(9) The notification recording a notation on the deed as required by § 257.105(i)(9).

(10) The notification of intent to comply with the alternative closure requirements as required by § 257.105(i)(10).

(11) The annual progress reports under the alternative closure requirements as required by § 257.105(i)(11).

(12) The written post-closure plan, and any amendment of the plan, specified under § 257.105(i)(12).

(13) The notification of completion of post-closure care specified under § 257.105(i)(13).

(14) The notification of intent to comply with the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under § 257.105(i)(14).

(15) The approved or denied demonstration for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by as specified under § 257.105(i)(15).

(16) The notification for requesting additional time to the alternative cease receipt of waste deadline as required by § 257.105(i)(16).

(17) The semi-annual progress reports for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under § 257.105(i)(17).

(18) The notification of intent to comply with the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as specified under § 257.105(i)(18).

(19) The approved or denied demonstration for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.105(i)(19).

(20) The annual progress report for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by § 257.105(i)(20).

(j) *Retrofit criteria.* The owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator's CCR Web site:

(1) The written retrofit plan, and any amendment of the plan, specified under § 257.105(j)(1).

(2) The notification of intent to comply with the alternative retrofit requirements as required by § 257.105(j)(2).

(3) The annual progress reports under the alternative retrofit requirements as required by § 257.105(j)(3).

(4) The demonstration(s) for a time extension for completing retrofit activities specified under § 257.105(j)(4).

(5) The notification of intent to retrofit a CCR unit specified under § 257.105(j)(5).

(6) The notification of completion of retrofit activities specified under § 257.105(j)(6).

[80 FR 21468, Apr. 17, 2015, as amended at 83 FR 36456, July 30, 2018; 85 FR 53566, Aug. 28, 2020; 85 FR 72543, Nov. 12, 2020]

ADEQ CCR rule, authorizing statutes; implementing statutes

49-891. Coal combustion residuals program; rules; incorporation by reference

A. The director may adopt rules to establish and operate a coal combustion residuals program equivalent to or at least as protective as the federal coal combustion residuals program under 40 Code of Federal Regulations part 257, subpart D for the purpose of obtaining approval to operate the federal CCR program. Federal coal combustion residuals regulations may be adopted by reference. Rules adopted pursuant to this subsection shall not be more or less stringent than or conflict with 40 Code of Federal regulations part 257, subpart D for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 Code of Federal regulations part 257, subpart D if these standards are developed pursuant to chapter 2, article 3 of this title.

B. Rules adopted pursuant to subsection A of this section shall not be more or less stringent than or conflict with 40 Code of Federal Regulations part 257, subpart D for nonprocedural standards, except that the department shall adopt those portions of the dam safety standards that are developed pursuant to title 45, chapter 6, article 1, that are in existence for CCR surface impoundments on September 24, 2022 and that are more stringent than 40 Code of Federal Regulations part 257, subpart D.

C. The rules authorized by subsection A of this section shall provide requirements for issuing, denying, suspending or modifying individual CCR permits, including:

1. Requirements for submitting notices, permit applications and any additional information necessary to determine whether a permit should be issued.

2. Recordkeeping, reporting and compliance schedule requirements in the permit.

3. A permit life of ten years, after which the permit shall be renewed.

4. Adequate opportunities for public participation during CCR permit processing.

5. Other terms and conditions as the director deems necessary to ensure compliance with this article.

D. The rules for CCR permits shall include:

1. Permit processing fees from the applicant to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit, beginning when an application is submitted.

2. Annual fees for the program approved by the United States environmental protection agency beginning after CCR program approval.

E. The fees authorized by this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

F. After the effective date of design and operation rules adopted by the director for coal combustion residuals facilities pursuant to this section, facilities with CCR units may submit to the department a permit application covering each CCR unit at the facility. Facilities with CCR units shall submit to the department a permit application covering each CCR unit at the facility within one hundred eighty days of CCR program approval.

Implementing statutes

49-763.01. Variances

Within ninety days after receipt of a written request for a variance from a solid waste facility owner, operator or management agency, the department may grant a variance from solid waste management rules and standards if the department concludes that no violation of health standards will occur. The department may consider whether an environmental nuisance will result. If the request is denied, the department shall prepare and make available to the management agency or facility owner or operator a written decision including relevant data and a technical analysis supporting the denial. The department shall not grant any variance or temporary authorization to operate under this chapter if the proposed variance conflicts or is inconsistent with the requirements of 40 C.F.R. part 257, subparts A and B, 40 Code of Federal Regulations part 257, subpart D or 40 C.F.R. part 258.

49-769. Agency orders; appeal

Except as provided in section 41-1092.08, subsection H, any final agency order issued pursuant to this article or article 11 of this chapter is subject to judicial review pursuant to title 12, chapter 7, article 6.

49-770. Financial assurance requirements for solid waste facilities

A. Beginning one hundred eighty days after the effective date of the design and operation rules adopted by the director for that type of solid waste facility pursuant to section 49-761 or article 11 of this chapter or after CCR program approval, whichever is later, a solid waste facility may not be operated unless financial responsibility has been demonstrated for the costs of closure, postclosure care, if necessary, and any corrective action as a result of known releases from the facility. Financial assurance for municipal solid waste landfills shall be required pursuant to section 49-761, subsection B. This subsection applies to small municipal solid waste landfills beginning on October 9, 1997. For all other municipal solid waste landfills, this subsection shall apply beginning on September 1, 1997 unless the director establishes

an alternative date pursuant to section 49-761, subsection B on a facility-specific basis.

B. Within one hundred eighty days after the effective date of the design and operation rules adopted by the director for that type of solid waste facility pursuant to section 49-761, existing solid waste facilities shall modify and submit existing facility plans to the department to demonstrate the financial responsibility required by this section. A solid waste facility in operation before the effective date of the design and operation rules adopted by the director for that type of solid waste facility pursuant to section 49-761 may continue to operate while the department reviews the modified plan.

C. Within one hundred eighty days after the effective date of design and operation rules adopted by the director for that type of solid waste facility pursuant to article 11 of this chapter, existing solid waste facilities regulated under article 11 of this chapter may submit to the department the financial responsibility required by this section. Within one hundred eighty days after CCR program approval, existing solid waste facilities regulated under article 11 of this chapter shall submit to the department the financial responsibility required by this section. A solid waste facility in operation before the effective date of CCR program approval may continue to operate while the department reviews the submission.

D. A demonstration of financial responsibility made for a solid waste facility under chapter 2, article 3 of this title shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section. A demonstration of financial assurance or competence required under this section or under chapter 2, article 3 of this title for a solid waste facility shall not be required before completion of construction but shall be required before the department issues approval to operate.

E. The terms and conditions adopted by the director for each financial assurance mechanism shall provide:

1. The amount in current dollars equal to the cost of hiring a third party to complete site closure and, if necessary, continued postclosure monitoring and maintenance consistent with the plan and any factor to be applied for inflation. Amounts shall be updated annually for solid waste landfills and every three years for all other solid waste facilities to adjust for inflation or as necessary to reflect increased costs resulting from changes to the facility plan or facility conditions.

2. The period after closure for which financial assurance is required.

F. The approved financial assurance mechanism shall not be released unless the plan-specified closure and postclosure requirements have been completed or unless new financial assurance has been submitted by a new owner or operator of the solid waste facility and approved by the director. The owner or operator of the solid waste facility:

1. Shall receive any accrued interest on financial assurance instruments retained by the department.

2. May request a reduction in financial assurance requirements on completion of closure or portions of postclosure monitoring and maintenance that are approved by the director.

3. Shall justify any reduction in closure or postclosure cost estimates in the facility plan.

4. Shall assure that the period of coverage of the financial assurance instrument exceeds by a minimum of ninety days the applicable one-year or three-year time period required in subsection E of this section.

5. Shall be released from closure or postclosure financial responsibility on certification by a registered professional engineer or other environmental professional deemed acceptable by the director that the specific activities of closure or postclosure have been completed in accordance with the approved facility plan and placed in the operating record of the facility plan.

G. For a local governmental agency with CCR units, the demonstration required by this section may contain the details of the financial arrangements used to meet the estimated closure and postclosure costs without specifying a specific financial assurance mechanism.

49-781. Compliance orders; appeal; enforcement

A. If the director determines that a person is in violation of any provision of article 3 or 4 of this chapter, a rule adopted pursuant to article 4 or 11 of this chapter or any condition of a coal combustion residuals permit or solid waste facility plan approval issued pursuant to this chapter or is creating an imminent and substantial endangerment to the public health or the environment, the director may issue an order requiring compliance immediately or within a specified period of time.

B. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance, if applicable, and the right to a hearing.

C. A compliance order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by hand delivery.

D. At the request of the director, the attorney general may file an action in superior court to enforce orders issued pursuant to this section after the order becomes final.

E. This section does not apply to CCR units until after CCR program approval.

49-783. Injunctive relief; civil penalties; costs

A. If the director has reason to believe that a person is in violation of any provision of article 3, 4 or 11 of this chapter, a rule adopted pursuant to article 4 or 11 of this chapter, any condition of a coal combustion residuals permit or an approved solid waste facility plan issued pursuant to article 4 of this chapter or that a person is creating an imminent and substantial endangerment to the public health or the environment, the director through the attorney general may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health or the environment, without regard to whether the person has requested a hearing.

B. A person who violates any provision of article 3, 4 or 11 of this chapter, a rule adopted pursuant to article 4 or 11 of this chapter, an order issued pursuant to this article, a coal combustion residuals permit or an approved solid waste facility plan issued pursuant to this chapter is subject to a civil penalty of not more than $1,000 for each day not to exceed $15,000 for each violation. At the request of the director, the attorney general shall file an action in superior court to recover civil penalties as prescribed by this section.

C. This section does not apply to CCR units until after CCR program approval.

49-791. Violation; classification; penalties

A. A person shall not:

1. Practice open burning at a solid waste facility without a variance approval issued by the director.

2. Scavenge at a solid waste facility.

3. Damage or destroy signs posted at a solid waste facility.

4. Dump or dispose of solid waste in violation of this chapter or any applicable rule adopted pursuant to article 4 or 11 of this chapter.

5. Operate a solid waste facility in a manner inconsistent with the solid waste facility plan after it has been approved or any rule adopted pursuant to article 4 or 11 of this chapter.

B. A violation of subsection A of this section is a class 2 misdemeanor.

C. In addition to the penalties prescribed by subsection B of this section or section 13-1603, subsection B, a person who violates this section or section 13-1603 shall be subject to a civil penalty in an amount prescribed by section 49-783.

49-881. Solid waste fee fund; uses; exemption

A. The solid waste fee fund is established. The director shall administer the fund. The fund consists of legislative appropriations, donations, gifts, grants, registration fees

collected pursuant to sections 44-1303 and 44-1304.01, waste tire administrative monies distributed pursuant to section 44-1305, subsection B, paragraph 1, lead acid battery collection and recycling fees collected pursuant to section 44-1322, licensure fees collected pursuant to section 49-104, subsection B, paragraph 14, subdivision (b), solid waste general permit fees collected pursuant to section 49-706, solid waste landfill registration fees from section 49-747, licensure fees collected pursuant to section 49-761, subsection D, paragraphs 2 and 3 and subsections H, J and M, solid waste fees collected pursuant to section 49-762.03, subsection F, section 49-802, subsection B, special waste management plan fees collected pursuant to section 49-857, special waste management fees collected pursuant to section 49-863, private consultants expedited plan review fees collected pursuant to section 49-762.03, subsection G, self-certification filing fees collected pursuant to section 49-762.05, subsection H, solid waste landfill disposal fees collected pursuant to section 49-836, special waste fees collected pursuant to section 49-855, subsection C, paragraph 2 and coal combustion residuals permit processing fees and annual fees collected pursuant to section 49-891.

B. Monies in the fund are subject to legislative appropriation for solid waste control programs established in the funding sources pursuant to subsection A of this section and as determined by the director.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided in section 35-313, and monies earned from investment shall be credited to the fund. Monies deposited in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

49-891.01. Powers of the director

After CCR program approval, the director may compel production of documents or information from owners and operators of coal combustion residuals units in order to evaluate compliance with applicable statutes, rules and permits.

ADEQ CCR rule; definitions not shown in rule or statutes

49-701. Definitions

In this chapter, unless the context otherwise requires:

1. "Administratively complete plan" means an application for a solid waste facility plan approval that the department has determined contains each of the components required by statute or rule but that has not undergone technical review or public notice by the department.

2. "Administrator" means the administrator of the United States environmental protection agency.

3. "Advanced recycling":

(a) Means a manufacturing process to convert post-use polymers and recovered feedstocks into basic hydrocarbon raw materials, feedstocks, chemicals, monomers, oligomers, plastics, plastics and chemical feedstocks, basic and unfinished chemicals, crude oil, naphtha, liquid transportation fuels and coatings and other products such as waxes and lubricants through processes that include pyrolysis, gasification, depolymerization, catalytic cracking, reforming, hydrogenation, solvolysis and other similar technologies.

(b) Does not include solid waste management, processing, incineration or treatment.

4. "Advanced recycling facility":

(a) Means a facility that receives, stores and converts post-use polymers and recovered feedstocks using advanced recycling.

(b) Includes a manufacturing facility that is subject to applicable provisions of law and department rules for air quality, water quality and waste and land use.

(c) Does not include a solid waste facility, processing facility, treatment facility, materials recovery facility, recycling facility or incinerator.

5. "Beneficial use of CCR" means that all of the following conditions apply:

(a) The CCR provides a functional benefit.

(b) The CCR substitutes for the use of a virgin material, which conserves natural resources that would otherwise need to be obtained through practices such as extraction.

(c) The use of the CCR meets relevant product specifications, regulatory standards or design standards when available, and when those standards are not available, the CCR is not used in excess quantities.

(d) For unencapsulated use of CCR involving placement of twelve thousand four hundred tons or more on the land in nonroadway applications, the user demonstrates, keeps records and provides documentation on request, that environmental releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

6. "CCR pile":

(a) Means any noncontainerized accumulation of solid, nonflowing CCR that is placed on the land.

(b) Does not include a CCR that is beneficially used off-site.

7. "CCR program approval" means United States environmental protection agency approval of the Arizona coal combustion residuals program in accordance with 42 United States Code section 6945(d)(1).

8. "CCR surface impoundment" or "impoundment" means a natural topographic depression, man-made excavation or diked area, which is designed to hold an accumulation of CCR and liquids, and the CCR unit treats, stores or disposes of CCR.

9. "Closed solid waste facility" means any of the following:

(a) A solid waste facility other than a CCR unit that ceases storing, treating, processing or receiving for disposal solid waste before the effective date of design and operation rules for that type of facility adopted pursuant to section 49-761.

(b) A public solid waste landfill that meets any of the following criteria:

(i) Ceased receiving solid waste before July 1, 1983.

(ii) Ceased receiving solid waste and received at least two feet of cover material before January 1, 1986.

(iii) Received approval for closure from the department after completing a postclosure care and monitoring plan as required by permit or plan approval.

(c) A public composting plant or a public incinerating facility that closed in accordance with an approved plan.

10. "Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

11. "Coal combustion residuals landfill" or "CCR landfill":

(a) Means an area of land or an excavation that receives CCR and that is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine or a cave.

(b) Includes sand and gravel pits and quarries that receive CCR or CCR piles and any use of CCR that does not meet the definition of a beneficial use of CCR.

12. "Coal combustion residuals unit" or "CCR unit":

(a) Means any CCR landfill, CCR surface impoundment or lateral expansion of a CCR unit or a combination of more than one of these units.

(b) Includes both new and existing units, unless otherwise specified.

13. "Construction debris" means solid waste derived from the construction, repair or remodeling of buildings or other structures.

14. "County" means:

(a) The board of supervisors in the context of the exercise of powers or duties.

(b) The unincorporated areas in the context of area of jurisdiction.

15. "Demolition debris" means solid waste derived from the demolition of buildings or other structures.

16. "Depolymerization" means a manufacturing process through which post-use polymers are broken into smaller molecules such as monomers and oligomers or raw, intermediate or final products, plastics and chemical feedstocks, basic and unfinished chemicals, crude oil, naphtha, liquid transportation fuels, waxes, lubricants, coatings and other basic hydrocarbons.

17. "Discharge" has the same meaning prescribed in section 49-201.

18. "Existing CCR landfill" means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced before October 19, 2015 and that receives CCR on or after October 19, 2015. For the purposes of this paragraph, "commenced construction" means the owner or operator of a CCR landfill has obtained the federal, state and local approvals or permits necessary to begin physical construction and a continuous on site, physical construction program had begun before October 19, 2015.

19. "Existing CCR surface impoundment" means a CCR surface impoundment that meets one of the following conditions:

(a) Receives CCR both before and after October 19, 2015.

(b) For which construction commenced before October 19, 2015 and that receives CCR on or after October 19, 2015. For the purposes of this paragraph, "commenced

construction" means the owner or operator of a CCR surface impoundment has obtained the federal, state and local approvals or permits necessary to begin physical construction and a continuous on site, physical construction program had begun before October 19, 2015.

20. "Existing solid waste facility" means a solid waste facility other than a CCR unit that begins construction or is in operation on the effective date of the design and operation rules adopted by the director pursuant to section 49-761 for that type of solid waste facility.

21. "Facility plan" means any design or operating plan for a solid waste facility or group of solid waste facilities other than a permit issued under article 11 of this chapter.

22. "40 C.F.R. part 257, subparts A and B" means 40 Code of Federal Regulations part 257, subparts A and B in effect on May 1, 2004.

23. "40 C.F.R. part 258" means 40 Code of Federal Regulations part 258 in effect on May 1, 2004.

24. "Gasification" means a manufacturing process through which recovered feedstocks are heated and converted into a fuel and gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw, intermediate and final products, including plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil and other fuels, including ethanol and transportation fuel, that are returned to economic utility in the form of raw materials, products or fuels.

25. "Household hazardous waste" means solid waste as described in 40 Code of Federal Regulations section 261.4(b)(1) as incorporated by reference in the rules adopted pursuant to chapter 5 of this title.

26. "Household waste":

(a) Means any solid waste, including garbage, rubbish and sanitary waste from septic tanks, that is generated from households, including single and multiple-family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

(b) Does not include construction debris, landscaping rubble or demolition debris.

27. "Inert material":

(a) Means material that satisfies all of the following conditions:

(i) Is not flammable.

(ii) Will not decompose.

(iii) Will not leach substances in concentrations that exceed applicable aquifer water quality standards prescribed by section 49-201, paragraph 22 when subjected to a water leach test that is designed to approximate natural infiltrating waters.

(b) Includes concrete, asphaltic pavement, brick, rock, gravel, sand, soil and metal, if used as reinforcement in concrete.

(c) Does not include special waste, hazardous waste, glass or other metal.

28. "Land disposal" means placement of solid waste in or on land.

29. "Landscaping rubble" means material that is derived from landscaping or reclamation activities and that may contain inert material and not more than ten percent by volume of vegetative waste.

30. "Lateral expansion" means, for the purposes of the coal combustion residuals program established pursuant to article 11 of this chapter, a horizontal expansion of the waste boundaries of an existing CCR landfill or existing CCR surface impoundment made after October 19, 2015.

31. "Management agency" means any person responsible for the day-to-day operation, maintenance and management of a particular public facility or group of public facilities.

32. "Medical waste":

(a) Means any solid waste that is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.

(b) Includes discarded drugs.

(c) Does not include hazardous waste as defined in section 49-921 other than very small quantity generator waste.

33. "Municipal solid waste landfill" means any solid waste landfill that accepts household waste, household hazardous waste or very small quantity generator waste.

34. "New solid waste facility" means a solid waste facility that begins construction or operation after the effective date of design and operating rules that are adopted pursuant to section 49-761 or article 11 of this chapter for that type of solid waste facility.

35. "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way if the entrance and exit between the properties are at a crossroads intersection and access is by crossing the right-of-way and not by traveling along the right-of-way. Noncontiguous properties that are owned by the same person and connected by a right-of-way that is controlled by that person

and to which the public does not have access are deemed on site property. Noncontiguous properties that are owned or operated by the same person regardless of right-of-way control are also deemed on site property.

36. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations, as well as a natural person.

37. "Post-use polymer":

(a) Means a plastic to which all of the following apply:

(i) The plastic is derived from any industrial, commercial, agricultural or domestic activities.

(ii) The plastic is not mixed with solid waste or hazardous waste on site or during processing at the advanced recycling facility.

(iii) The plastic's use or intended use is as a feedstock for manufacturing crude oil, fuels, feedstocks, blendstocks, raw materials or other intermediate products or final products using advanced recycling.

(iv) The plastic has been sorted from solid waste and other regulated waste but may contain residual amounts of solid waste such as organic material and incidental contaminants or impurities such as paper labels and metal rings.

(v) The plastic is processed at an advanced recycling facility or held at an advanced recycling facility before processing.

(b) Does not include solid waste or municipal waste.

38. "Process" or "processing" means the reduction, separation, recovery, conversion or recycling of solid waste.

39. "Public solid waste facility" means a transfer facility and any site owned, operated or used by any person for the storage, processing, treatment or disposal of solid waste that is not generated on site.

40. "Pyrolysis" means a manufacturing process through which post-use polymers are heated in the absence of oxygen until melted, are thermally decomposed and are then cooled, condensed and converted into valuable raw, intermediate and final products, including plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil and other fuels, including ethanol and transportation fuel, that are returned to economic utility in the form of raw materials, products or fuels.

41. "Recovered feedstocks":

(a) Means one or more of the following materials that have been processed so that they may be used as feedstock in an advanced recycling facility:

(i) Post-use polymers.

(ii) Materials for which the United States environmental protection agency has made a nonwaste determination pursuant to 40 Code of Federal Regulations section 241.3(c) or has otherwise determined are feedstocks and not solid waste.

(b) Does not include:

(i) Unprocessed municipal solid waste.

(ii) Materials that are mixed with solid waste or hazardous waste on site or during processing at an advanced recycling facility.

42. "Recycling facility" means a solid waste facility that is owned, operated or used for the storage, treatment or processing of recyclable solid waste.

43. "Salvaging" means the removal of solid waste from a solid waste facility with the permission and in accordance with rules or ordinances of the management agency for purposes of productive reuse.

44. "Scavenging" means the unauthorized removal of solid waste from a solid waste facility.

45. "Solid waste facility" means a transfer facility and any site owned, operated or used by any person for the storage, processing, treatment or disposal of solid waste, very small quantity generator waste or household hazardous waste but does not include the following:

(a) A site at which less than one ton of solid waste that is not household waste, household hazardous waste, very small quantity generator waste, medical waste or special waste and that was generated on site is stored, processed, treated or disposed in compliance with section 49-762.07, subsection F.

(b) A site at which solid waste that was generated on site is stored for ninety days or less.

(c) A site at which nonputrescible solid waste that was generated on site in amounts of less than one thousand kilograms per month per type of nonputrescible solid waste is stored and contained for one hundred eighty days or less.

(d) A site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material and that is not a waste tire facility, a transfer facility or a recycling facility.

(e) A site where sludge from a wastewater treatment facility is applied to the land as a fertilizer or beneficial soil amendment in accordance with sludge application requirements.

(f) A closed solid waste facility.

(g) A solid waste landfill that is performing or has completed postclosure care before July 1, 1996 in accordance with an approved postclosure plan.

(h) A closed solid waste landfill performing a onetime removal of solid waste from the closed solid waste landfill, if the operator provides a written notice that describes the removal project to the department within thirty days after completion of the removal project.

(i) A site where solid waste generated in street sweeping activities is stored, processed or treated before disposal at a solid waste facility authorized under this chapter.

(j) A site where solid waste generated at either a drinking water treatment facility or a wastewater treatment facility is stored, processed, or treated on site before disposal at a solid waste facility authorized under this chapter, and any discharge is regulated pursuant to chapter 2, article 3 of this title.

(k) A closed solid waste landfill where development activities occur on the property or where excavation or removal of solid waste is performed for maintenance and repair if the following conditions are met:

(i) When the project is completed there will not be an increase in leachate that would result in a discharge.

(ii) When the project is completed the concentration of methane gas will not exceed twenty-five percent of the lower explosive limit in on-site structures, or the concentration of methane gas will not exceed the lower explosive limit at the property line.

(iii) Protection has been provided to prevent remaining waste from causing any vector, odor, litter or other environmental nuisance.

(iv) The operator provides a notice to the department containing the information required by section 49-762.07, subsection A, paragraphs 1, 2 and 5 and a brief description of the project.

(l) Agricultural on-site disposal as provided in section 49-766.

(m) The use, storage, treatment or disposal of by-products of regulated agricultural activities as defined in section 49-201 and that are subject to best management practices pursuant to section 49-247 or by-products of livestock, range livestock and

poultry as defined in section 3-1201, pesticide containers that are regulated pursuant to title 3, chapter 2, article 6 or other agricultural crop residues.

(n) Household hazardous waste collection events held at a temporary site for not more than six days in any calendar quarter.

(o) Wastewater treatment facilities as defined in section 49-1201.

(p) An on-site single-family household waste composting facility.

(q) A site at which five hundred or fewer waste tires are stored.

(r) A site at which mining industry off-road waste tires are stored or are disposed of as prescribed by rules in effect on February 1, 1996, until the director by rule determines that on-site recycling methods exist that are technically feasible and economically practical.

(s) A site at which underground piping, conduit, pipe covering or similar structures are abandoned in place in accordance with applicable state and federal laws.

(t) An advanced recycling facility that converts recovered feedstocks to manufacture raw materials and intermediate and final products.

46. "Solid waste landfill":

(a) Means a facility, area of land or excavation in which solid wastes are placed for permanent disposal.

(b) Does not include a land application unit, surface impoundment, injection well, coal combustion residuals landfill, compost pile or waste pile or an area containing ash from the on-site combustion of coal that does not contain household waste, household hazardous waste or very small quantity generator waste.

47. "Solid waste management" means the systematic administration of activities that provide for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

48. "Solid waste management plan" means the plan that is adopted pursuant to section 49-721 and that provides guidelines for the collection, source separation, storage, transportation, processing, treatment, reclamation and disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

49. "Solvolysis":

(a) Means a manufacturing process through which post-use polymers are purified with the aid of solvents, allowing additives and contaminants to be removed and producing

polymers capable of being recycled or reused without first being reverted to a monomer.

(b) Includes hydrolysis, aminolysis, ammonoloysis, methanolysis and glycolysis.

50. "Storage" means the holding of solid waste.

51. "Transfer facility":

(a) Means a site that is owned, operated or used by any person for the rehandling or storage for ninety days or less of solid waste that was generated off site for the primary purpose of transporting that solid waste.

(b) Includes those facilities that include significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

52. "Treatment" means any method, technique or process used to change the physical, chemical or biological character of solid waste so as to render that waste safer for transport, amenable for processing, amenable for storage or reduced in volume.

53. "Vegetative waste":

(a) Means waste derived from plants, including tree limbs and branches, stumps, grass clippings and other waste plant material.

(b) Does not include processed lumber, paper, cardboard and other manufactured products that are derived from plant material.

54. "Very small quantity generator waste" means hazardous waste in quantities as defined by rules adopted pursuant to section 49-922.

55. "Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

56. Waste tire does not include tires used for agricultural purposes as bumpers on agricultural equipment or as ballast to maintain covers at an agricultural site, or any tire disposed of using any of the methods in section 44-1304, subsection D, paragraphs 1, 2, 3, 5 through 8 and 11 and means any of the following:

(a) A tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

(b) A tire that is removed from a motor vehicle and is retained for further use.

(c) A tire that has been chopped or shredded.

57. "Waste tire facility" means a solid waste facility at which five thousand or more waste tires are stored outdoors on any day.

D-8.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 13

New Article: Article 4, Article 19, Article 20, Article 22

New Section: R18-13-401, R18-13-402, R18-13-1212.01, R18-13-1306, R18-13-1901, R18-13-2001, R18-13-2002, R18-13-2003, R18-13-2104, R18-13-2201, R18-13-2202

Amend: R18-13-501, R18-13-702, Fee Tables, R18-13-801, Table, R18-13-1103, R18-13-1117, Article 12, R18-13-1201, R18-13-1211, R18-13-1212, R18-13-1213, Article 13, R18-13-1307, R18-13-1409, Table 1, Table 2, R18-13-1410, R18-13-1606, Article 21, R18-13-2101, R18-13-2102, R18-13-2103

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: November 12, 2024

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 13

New Article: Article 4, Article 19, Article 20, Article 22

New Section: R18-13-401, R18-13-402, R18-13-1212.01, R18-13-1306, R18-13-1901, R18-13-2001, R18-13-2002, R18-13-2003, R18-13-2104, R18-13-2201, R18-13-2202

Amend: R18-13-501, R18-13-702, Fee Tables, R18-13-801, Table, R18-13-1103, R18-13-1117, Article 12, R18-13-1201, R18-13-1211, R18-13-1212, R18-13-1213, Article 13, R18-13-1307, R18-13-1409, Table 1, Table 2, R18-13-1410, R18-13-1606, Article 21, R18-13-2101, R18-13-2102, R18-13-2103

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) seeks to add four (4) new Articles, add eleven (11) new Sections, and amend twenty (20) rules and tables in Title 18, Chapter 13 regarding fees related to Solid Waste Management. Specifically, this rulemaking seeks to adjust existing fees and establish new fees throughout Title 18, Chapter 13 as authorized and required by Laws 2024, 2nd Regular Session, Ch. 121 (HB2367). The Department indicates this includes the incorporation of fees currently established under statute. The Department states these fee changes are necessary to address direct and

administrative costs of the Department's relevant duties and regulatory activities for solid waste management. The Department indicates it last set solid waste fees in 2012.

The Department indicates fees set in 2012 were based upon a one-time rulemaking authority from the Legislature pursuant to Laws 2011, 1st regular session, Ch. 220 (HB2705). The Department states any subsequent adjustment, even adjustments for inflation, would have required specific statutory authority from the Legislature. Thus, the Department states, with the passage of HB2367, it was necessary to re-evaluate fees set in 2012. The Department indicates this rulemaking sets fees to levels that accurately reflect current economic conditions, provides for an annual adjustment based upon the Consumer Price Index to ensure fees remain current, and establishes fees more completely throughout all of Title 18, Chapter 13, Solid Waste Management, to ensure overall program health and fairer cost-sharing among regulated facilities and entities. The Department indicates the purpose of this rule is to achieve self-sufficiency of the Solid Waste Programs (SWP).

1. <u>Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?</u>

The Department cites both general and specific statutory authority for these rules.

2. <u>Do the rules establish a new fee or contain a fee increase?</u>

This rulemaking both established new fees and increases existing fees related to Solid Waste Management in Title 18, Chapter 13 as authorized by Laws 2024, 2nd Regular Session, Ch. 121 (HB2367).

A.R.S. § 41-1052(E) states, "[t]he [C]ouncil shall verify that a rule with new fees does not violate section 41-1008." A.R.S. § 41-1008(A) states the following:

> "[A]n agency shall not:
>
> 1. Charge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute or tribal state gaming compact.
>
> 2. Make a rule establishing a fee that is solely based on a statute that generally authorizes an agency to recover its costs or to accept gifts or donations.
>
> 3. Increase a fee in an amount that exceeds the percentage of change in the average consumer price index as published by the United States department of labor, bureau of labor statistics between that figure for the latest calendar year and the calendar year in which the last fee increase occurred. An agency may increase a fee in an amount that exceeds the percentage of change in the average consumer price index if either of the following applies:

(a) The agency submits the fee increase to the joint legislative budget committee for review before the fee is increased.

(b) The agency is required to submit an annual report that includes information about the fee to members of the legislature.

The Department indicates the new fees are specifically authorized by the following statutes: A.R.S. §§ 44-1322, 49-761(D)(3), 49-761(H), 49-761(M), 49-802(B), and 49-855(G). Furthermore, as required by A.R.S. § 41-1008(A)(3)(a), for seven fee increases exceeding the CPI, including registration fees for solid waste landfills accepting less than 60,000 tons of waste annually, waste tire sites, including waste tire sites subject to self-certification, used tire sites, transfer stations subject to self-certification, biohazardous medical waste transporters, and septage haulers, the Department submitted them to the Joint Legislative Budget Committee for the Committee's review.

Council staff believes the Department has complied with its requirements under A.R.S. § 41-1008.

3. <u>Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?</u>

The Department indicates it did not review any study relevant to this rulemaking.

4. <u>Summary of the agency's economic impact analysis:</u>

The Department states that the purpose of these changes is to both adjust existing fees and establish new fees throughout Solid Waste Management. The Department indicates that this rulemaking also establishes in rule fees that currently only exist in statute. Fees under this rule are categorized into two broad groups. One group being current fees paid by waste facilities and licenses that would be subject to an adjustment under this rulemaking. These facilities and licensees include publicly and privately-owned landfills, used and waste tire facilities, self-certification transfer facilities, biohazardous medical waste transporters, septage haulers, and special waste facilities that receive shredder residue and petroleum contaminated soil (PCS). The second group of fees, according to the Department, are those established under this rulemaking. Facilities and entities subject to a new fee include transfer facilities subject to best management practices, used oil haulers, medical waste facilities that are permitted for storage or treatment, facilities generating or transporting special waste, landfills that enter into post-closure care, and collection and recycling facilities accepting lead acid batteries. The Department states that these rule changes are intended to collect fees to ensure the financial stability of Solid Waste Management programs, not to change the conduct of any regulated facilities or entities.

The Department states the goal in this rulemaking is to adjust and establish fees throughout Solid Waste Management that will sustain critical programs while avoiding disproportionate impact on any one group of stakeholders or regulated entities.

5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department believes this rulemaking is the least intrusive and costly means possible to achieve the same objectives. The Department indicates that it engaged with stakeholders to explore methods to reduce the impact of new or increased fees, including among other outreach efforts three stakeholder meetings, and established an implementation schedule for the first calendar year of the fees to impose the least cost. The Department finds that the benefits associated with this rule change outweigh any foreseen or anticipated costs.

6. What are the economic impacts on stakeholders?

The Department believes this rule sets fees to levels that accurately reflect current economic conditions, provides for an annual adjustment-based upon the Consumer Price Index to ensure fees remain current, and establishes fees more completely throughout all of A.A.C. Title 18, Chapter 13, Solid Waste Management, to ensure overall program health and fairer cost-sharing among regulated facilities and entities. The Department states that the purpose of this rule is to achieve self-sufficiency of the SWP.

The Department states that with fees resulting in a fully-funded SWP, it may engage in greater compliance assistance for regulated facilities and entities. Further, the Department will have more resources to facilitate more expeditious permit review, both for new permits and renewals. This will allow permit applicants to begin facility operations sooner, mitigating administrative burdens associated with permit review time and allowing for faster business development, while still maintaining high regulatory standards for facilities and solid waste operations to endure the protection of human health and the environment.

Further, the Department states, a fully-funded SWP will provide the Department with the resources needed to engage in greater oversight and compliance, ensuring a more level playing field between regulated businesses and entities. With greater enforcement and oversight, the Department may better identify and address pollution, spills, and failures to meet regulatory requirements. This further promotes adherence amongst all facilities, mitigating harm to those facilities and entities that must compete with and operate in the same regulatory space as those facilities and entities that may fail to adhere to minimum standards. Additionally, SWP may engage in more robust partnership with the regulated community through activities and programs designed to promote compliance and assistance. Increased program funding and stability can result in greater collaboration with the regulated community, including greater engagement by SWP sections in outreach that helps facilities understand and comply with regulations.

Probable costs to businesses directly affected by the rulemaking include the new or increased fees privately-owned solid waste facilities and entities will be subject to, as well as increased landfill tonnage and special waste tonnage fees. The Department believes the implementation schedule was designed to impose the least burden possible on all facilities and entities subject to fees under this rule, including small businesses.

Probable costs to political subdivisions from the implementation of this rule are the increased and new fees each political subdivision will be subject to for their county and municipal solid waste facilities and entities, as well as the increased landfill tonnage fees.

7. <u>Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?</u>

The Department indicates it made the following changes to the rule language between the Notice of Proposed Rulemaking published in the Administrative Register on August 16, 2024 and the Notice of Final Rulemaking now before the Council for consideration to reduce the regulatory burden and impact on stakeholders:

- Place a cap of 4% on the annual CPI adjustment for all fees. This involves inserting language stating "except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year" at: R18-13-402(E), R18-13-501(F), R18-13-702(G), R18-13-801(A), R18-13-1103(E), R18-13-1211(C), R18-13-1212(D), R18-13-1212.01(C), R18-13-1306(E), R18-13-1307(H), R18-13-1409(J), R18-13-1410(G), R18-13-1606(F), R18-13-1901(C), R18-13-2002(D), R18-13-2102(D), R18-13-2103(C), and R18-13-2202(D).
- Set back the time of implementation of the adjustment from January to July of each year. This involves striking the word "January" and replacing with "July" at: R18-13-402(E), R18-13-501(F), R18-13-702(G), R18-13-801(A), R18-13-1103(E), R18-13-1211(C), R18-13-1212(D), R18-13-1212.01(C), R18-13-1306(E), R18-13-1307(H), R18-13-1409(J), R18-13-1410(G), R18-13-1606(F), R18-13-1901(C), R18-13-2002(D), R18-13-2102(D), R18-13-2103(C), and R18-13-2202(D).
- Remove the annual CPI adjustment for the solid waste landfill disposal fee. This involves removing, in whole, subsection (H) of R18-13-2104.
- Set back the implementation of the new tire sales fee until April 1, 2025. This involves inserting the language "Beginning April 1, 2025" at the beginning of R18-13-2202(A).

The Department also indicates it made the following additional non-substantive changes to improve clarity and better confirm with official style and form guidance:

- R18-13-501(C). Reformat the numerical list to conform with current rule language.
- R18-13-1103(C)(3). Replace the semicolon at the end of a list with a comma.
- R18-13-1201. Reorder the new definition of "waste tire collection site" to now be in alphabetical order.
- R18-13-1307(F). Reformat the subsection to conform with official Arizona rulemaking publishing style and form. This includes re-lettering current subsection (G) to subsection (F) and establishing subsection (F)(2) as new subsection (H).
- R18-13-1409(I)(4). Correct the subsection reference from subsection (K) to subsection (I).
- R18-13-1606(E). Correct the subsection reference from subsection (B) to subsection (C).
- R18-13-2002(D). Correct the subsection references from subsection (B) and (C) to subsections (A) and (B).

- R18-13-2104(C). Clarify the maximum fee amount is an annual maximum.
- R18-13-2104(F). Delete redundant reference to "other information deemed necessary by the Department."
- R18-13-2202(C). Add the word "Arizona" before "Department of Revenue" to improve clarity and consistency.
- R18-13-2202(D)(2). Add language stating ADEQ shall notify the Arizona Department of Revenue of the annual CPI adjustment to the new tire sale fee as soon as practicable.

Council staff does not believe these changes make the rules substantially different pursuant to A.R.S. § 41-1025.

8. <u>Does the agency adequately address the comments on the proposed rules and any supplemental proposals?</u>

The Department indicates it received fifteen (15) comment letters throughout the formal comment period that ran from August 16, 2024 to September 20, 2024. The Department indicates nine (9) of these comment letters came from cities and towns, including the cities of Glendale, Goodyear, Mesa, Phoenix, Tempe, Tucson, Casa Grande, Scottsdale, and the Town of Gilbert, with the remaining comment letters coming from the League of Arizona Cities and Towns, Graham County, Gila County, the National Waste & Recycling Association's (NWRA-AZ) Arizona Chapter, the County Supervisors Association, and a member of the business community. The Department states it also received several formal oral comments during a public hearing held on September 19, 2024. The comments received by the Department and the Department's responses are summarized in Section 12 of the Preamble to the Notice of Final Rulemaking. Additionally, copies of the public comments received have been included in the final materials for the Council's reference. Council staff believes the Department has adequately responded to public comments related to this rulemaking.

9. <u>Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?</u>

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates the requirements of A.R.S. § 41-1037 are not applicable as the registrations established by these rules do not meet the definition of a "license" found in A.R.S. §

41-1001(13) which is defined as "the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes." The Department indicates the rules establish registration requirements solely for revenue purposes which fall outside this definition.

10. <u>Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?</u>

The Department indicates there is no corresponding federal law.

11. <u>Conclusion</u>

This regular rulemaking from the Department seeks to add four (4) new Articles, add eleven (11) new Sections, and amend twenty (20) rules and tables in Title 18, Chapter 13 regarding fees related to Solid Waste Management. Specifically, this rulemaking seeks to adjust existing fees and establish new fees throughout Title 18, Chapter 13 as authorized and required by Laws 2024, 2nd Regular Session, Ch. 121 (HB2367). The Department indicates this includes the incorporation of fees currently established under statute. The Department states these fee changes are necessary to address direct and administrative costs of the Department's relevant duties and regulatory activities for solid waste management. The Department indicates it last set solid waste fees in 2012.

The Department is requesting an immediate effective date for these rules pursuant to A.R.S. § 41-1032(A)(1), to preserve public safety and protect human health and the environment by ensuring necessary funding for SWP regulatory activities. The Department indicates this immediate effective date reflects the urgency recognized by the Legislature with the passage of HB2367 pursuant to an emergency clause for immediate enactment. The Department states delaying the effective date would mean that the rule would not be able to take effect until January 2025 or later, seriously jeopardizing the financial viability of the program and putting SWP inspection, enforcement, and services at risk. Council staff believes the Department has provided adequate justification for an immediate effective date pursuant to A.R.S. § 41-1032.

Council staff recommends approval of this rulemaking.

Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

10/22/2024

Jessica Klein, Chairperson
Governor's Regulatory Review Council
100 N. 15th Ave., Suite 302
Phoenix, AZ 85007

Re: Rulemaking for Title 18. Environmental Quality, Chapter 13. Department of Environmental Quality – Solid Waste Management

Dear Chairperson Klein:

The Arizona Department of Environmental Quality (ADEQ) hereby submits a regular rulemaking proposing changes to Arizona Administrative Code (A.A.C) Title 18, Chapter 13 to the Governor's Regulatory Review Council (GRRC) for its consideration and approval. This rulemaking adjusts existing fees and establishes new fees throughout 18 A.A.C. 13, Solid Waste Management, as authorized and required by Laws 2024, 2nd Regular Session, Ch. 121 (HB2367).

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

I. Information Required by A.A.C. R1-6-201(A)(1)

- The public record closed for the rule on September 20, 2024 at 5:00 p.m.
- This regular rulemaking does not relate to a five-year review report.
- This regular rulemaking establishes new fees and contains fee increases. Statutes expressly authorizing the new fees: A.R.S. §§ 44-1322, 49-761(D)(3), 49-761(H), 49-761(M), 49-802(B), and 49-855(G).
- An immediate effective date is requested for the rule pursuant to A.R.S. § 41-1032.
- The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
- No new full-time employees are necessary to implement or enforce the rule.
- A list of documents enclosed under A.A.C. R1-6-201(A)(2)-(8), which are attached as electronic copies:
    - The Notice of Final Rulemaking (NFRM), including the preamble, table of contents, and text of the rule.
    - The economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055.

- The written comments and transcript of oral comments received by ADEQ on the Notice of Proposed Rulemaking (NPRM).
- ADEQ received no analysis regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.
- This rulemaking does not incorporate materials by reference; therefore, no such materials are included.
- One electronic copy of each of the following is enclosed: the general and specific statutes authorizing the rule, including relevant statutory definitions: A.R.S. §§ 44-1301, 44-1302, 44-1303, 44-1304.01, 44-1322, 49-104, 49-701, 49-706, 49-747, 49-761, 49-762.03, 49-762.05, 49-801, 49-802, 49-831, 49-836, 49-851, 49-855, and 49-857.
- Defined terms in A.A.C. R18-13-501, R18-13-701, R18-13- R18-13-1102, R18-13-1201, R18-13-1301, R18-13-1401, R18-13-1601, and R18-13-2101 which are referred to in this rule.

Thank you for your timely review and approval. Please contact myself or Matt Rippentrop, Rule Writer, Waste Programs Division, 602-771-4329 or rippentrop.matt@azdeq.gov, if you have any questions.

Sincerely,

Karen Peters
Deputy Director
Arizona Department of Environmental Quality

Attachments

NOTICE OF FINAL RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT

PREAMBLE

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

October 21, 2024

2. Article, Part, or Section Affected (as applicable)	Rulemaking Action
Article 4	New Article
R18-13-401	New Section
R18-13-402	New Section
R18-13-501	Amend
R18-13-702	Amend
Fee Tables	Amend
R18-13-801	Amend
Table	Amend
R18-13-1103	Amend
R18-13-1117	Amend
Article 12	Amend
R18-13-1201	Amend
R18-13-1211	Amend
R18-13-1212	Amend
R18-13-1212.01	New Section
R18-13-1213	Amend
Article 13	Amend
R18-13-1306	New Section
R18-13-1307	Amend
R18-13-1409	Amend
Table 1	Amend
Table 2	Amend
R18-13-1410	Amend
R18-13-1606	Amend
Article 19	New Article
R18-13-1901	New Section
Article 20	New Article
R18-13-2001	New Section
R18-13-2002	New Section
R18-13-2003	New Section
Article 21	Amend
R18-13-2101	Amend
R18-13-2102	Amend
R18-13-2103	Amend
R18-13-2104	New Section
Article 22	New Article
R18-13-2201	New Section

R18-13-2202 New Section

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

Authorizing statute: Laws 2024, 2nd Regular Session, Ch. 121

Implementing statute: A.R.S. §§ 44-1302, 44-1303, 44-1304.01, 44-1322, 49-104(B)(14)(b), 49-706, 49-747, 49-761, 49-762.03, 49-762.05, 49-802, 49-836, 49-855, and 49-857

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 (to be filled in by *Register* editor).

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):

The effective date of this rule is _____. Pursuant to A.R.S. § 41-1032(A)(1), the reason for the immediate effective date is to preserve public safety and protect human health and the environment by ensuring necessary funding for Solid Waste Programs (SWP) regulatory activities. This immediate effective date reflects the urgency recognized by the Legislature with the passage of HB2367 pursuant to an emergency clause for immediate enactment. Delaying the effective date would mean that the rule would not be able to take effect until January 2025 or later, seriously jeopardizing the financial viability of the program and putting SWP inspection, enforcement, and services at risk.

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: 30 A.A.R. 1047, Issue Date: May 17, 2024, Issue Number: 20, File number: R24-84

Notice of Proposed Rulemaking: 30 A.A.R. 2575, Issue Date: August 16, 2024, Issue Number: 33, File number: R24-152

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

Name: Matt Rippentrop
Title: Rule Writer
Division: Waste Programs Division
Address: 1110 W. Washington St. Phoenix, AZ 85007
Telephone: (602) 771-4329
Email: rippentrop.matt@azdeq.gov

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

Summary: This rule adjusts existing fees and establishes new fees throughout 18 A.A.C. 13, Solid Waste Management, as authorized and required by Laws 2024, 2nd Regular Session, Ch. 121 (HB2367). This includes the incorporation of fees currently established under statute. These fee changes are necessary to address direct and administrative costs of the Arizona Department of Environmental Quality's (ADEQ) relevant duties and regulatory activities for solid waste management. ADEQ last set solid waste fees in

2012. While fees set in 2012 were a critical step towards the ultimate goal of implementing a fee-based funding model for the Solid Waste Program (SWP), more work is now necessary to fully realize this goal. Fees set in 2012 were based upon a one-time rulemaking authority from the Legislature pursuant to Laws 2011, 1st regular session, Ch. 220 (HB2705). Any subsequent adjustment, even adjustments for inflation, would have required specific statutory authority from the Legislature. Thus, with the passage of HB2367, it was necessary to re-evaluate fees set in 2012. This rule sets fees to levels that accurately reflect current economic conditions, provides for annual adjustments based upon the Consumer Price Index to ensure fees remain current, and establishes fees more completely throughout all of A.A.C. Title 18, Chapter 13, Solid Waste Management, to ensure overall program health and fairer cost-sharing among regulated facilities and entities. The purpose of this rule is to achieve self-sufficiency of the SWP.

Description of Solid Waste Management Programs: Solid waste management is a key responsibility of the state. Solid waste management mitigates adverse health and environmental impacts and improves the viability of Arizona. Having a robust and sustainable SWP ensures the proper storage, transportation, and disposal of solid waste to prevent negative impacts to the state in forms of uncontrolled dumping and pollution of our water, land, and air. SWP regulates the management of solid waste from homes and businesses from the point of generation through transportation, and ultimately how it is recycled or disposed of.

There are approximately 2,000 solid waste facilities with different media types subject to ADEQ regulatory compliance and oversight under SWP. The scope and type of these facilities is diverse, with different waste streams, locations, sizes, communities served, facility capacity, and both regulatory and support activities required of ADEQ. These facilities include but are not limited to solid waste transfer facilities of varying size and sophistication, from rural drop-site locations to city facilities, septage hauler licensees, waste tire sites, off-site facilities registered for the treatment, storage, or disposal of Arizona special waste, special waste transporters and generators, biohazardous medical waste management entities, used oil handlers and collectors subject to the federal used oil program, facilities accepting lead acid batteries for collection or recycling, and both municipal and non-municipal landfills. These facilities are located throughout the state, requiring SWP to engage in inspection, management, and oversight in every county.

Regulatory activities for which ADEQ is responsible includes inspections, permitting and licensing programs, public records management, fielding and investigating complaints, and providing compliance assistance. Effective implementation of these regulatory activities for all solid waste facilities is the foundation for furthering the Waste Program Division's mission to protect and enhance public health and the environment by reducing the risk associated with waste management, contaminated sites, and regulated substances.

Background: SWP has long faced budget shortfalls, which have sharply increased in the last five years. Since FY2019, overall SWP's costs have increased by approximately $1,500,000, from $2,000,000 to $3,500,000. In addition to other factors such as the state's rapid population growth, a major contributor to this increasingly steep budget shortfall has been inflation. Since 2012, the Phoenix metro area has experienced inflation of 48.52%. Further, for the last 12 years since fees were last set in 2012, ADEQ has not had the ability to adjust fees to account for a shifting economic landscape due to one-time rulemaking authorities, while experiencing expanded Program responsibility and greater costs related to regulatory and oversight activities. For example, since 2012, the number of regulated solid waste facilities has

increased by 333% from approximately 460 facilities to 2,000 facilities.

Following the steep economic downturn in the late 2000s and resulting severe state budget shortfalls, many state programs lost funding from the Arizona General Fund. SWP is one such program. In response, and pursuant to HB2705, in 2012 ADEQ implemented a fee-based program model for the first time for SWP. While fees set in 2012 were an important step towards the goal of a fully self-funded program, HB2705 granted a one-time authority only for establishing fee levels, inhibiting the ability of ADEQ to make future adjustments as necessary. Further, fees set in 2012 covered only half of SWP statutory mandates, resulting in a large portion of mandated regulatory activities of SWP not having a source of revenue under the fee-based program. As such, SWP was unable to fully cover program costs with the fee levels established in 2012. This has resulted in continued program strain and the need to expend moneys from the Recycling Fund to cover management of solid waste regulatory programs. For the last several fiscal years, approximately half of SWP's costs have been covered by fees, while expenditure from the Recycling Fund was necessary to cover the other half. As fees remain unchanged and costs continue to rise, increasing expenditures from the Recycling Fund have become necessary in recent fiscal years.

Ultimately, while the 2012 fees represent a critical step towards full program stability, more work is necessary to realize the goal of establishing a fully self-funded and sustainable SWP. To this end, the Arizona Legislature passed and the Governor signed HB2367 on April 9, 2024, with an emergency clause for an immediate effective date. HB2367 makes amendments throughout Titles 44 and 49 of the Arizona Revised Statutes to eliminate one-time rulemaking authorities relating to fees, authorized the incorporation into rule of the existing statutory new tire sale and landfill disposal fees, and authorized rulemaking to establish new fees for regulatory services and legislative mandates currently being performed. Establishing new fees for currently regulated facilities and entities is a critical component in establishing a fully sustained fee-based program that is fairly assessed against all regulated parties. While SWP has experienced budget shortfalls for several years, it is only with HB2367 that ADEQ now has the authority and mandate to establish these new fees for currently regulated parties.

This rulemaking is critical to make SWP whole, sustainable, and secure. Further, these fees allow expenditures from the Recycling Fund to be refocused on its important mission. ADEQ intends for revenue in the Recycling Fund be used for the stated purpose of grants and contracts for "research, demonstration projects, new technologies, market development and source reduction studies and implementation of the recommendations or reports prepared." *See* A.R.S. § 49-837(B)(1). As SWP becomes sustainable through a more robust fee-based program, ADEQ is committed to apportioning the greatest portion feasible of the Recycling Fund towards grants and contracts and other stated uses under A.R.S. § 49-837 to further the mission of the Arizona Recycling Program.

<u>Explanation of Fee Methodology:</u> There are two broad groups into which fees under this rulemaking may be categorized. This first group is new fees being established by this rulemaking. These include initial registration and annual fees for transfer facilities subject to best management practices, used oil handlers, medical waste facilities that are permitted for storage or treatment, facilities generating, treating, or transporting special waste, collection and recycling facilities accepting lead acid batteries, and annual fees for landfills that enter into post-closure care and waste tire facilities subject to plan approval. To note, those facilities subject to plan approval fees will not be subject to an initial registration fee, instead only to annual registration fees.

The second group is current fees that are subject to an adjustment under this rulemaking. This group may further be distinguished between those fees being increased by a Consumer Price Index (CPI) adjustment and those fees being increased beyond a CPI adjustment. Those fees subject to a CPI adjustment include disposal fees for petroleum contaminated soil (PCS) and auto-shredder residue, fees for plan review of solid waste facilities subject to plan review under R18-13-702, including modifications to solid waste facility plans and review of financial responsibility plans, solid waste general permit fees, annual registration fees for landfills that accept 225,000 tons or more of waste annually, and two current statutory fees being established in rule: solid waste landfill disposal fees and the fee on the sale of new tires.

Those fees subject to an adjustment beyond CPI are registration fees for solid waste landfills accepting less than 60,000 tons of waste annually, waste tire sites, including waste tire sites subject to self-certification, used tire sites, transfer stations subject to self-certification, biohazardous medical waste transporters, and septage haulers.

In determining new fees throughout Solid Waste Management, ADEQ was guided by its statutory mandates that all fees be based upon the Department's direct and indirect costs associated with regulatory activities for the facility or entity subject to the fee and that all fees be fairly assessed and impose the least burden and cost. *See* A.R.S. § 49-104(B)(17). To this end, ADEQ began by reviewing the actual costs of regulatory activities to the Department for facilities under Solid Waste Management. Relevant costs are based on necessary Agency functions corresponding to regulated activities and include but are not limited to administrative operations, inspections, permitting and licensing, fielding complaints, compliance assistance, data management, and public records management. This review included calculating time and resources expended on these Agency functions to carry out regulated activities for each class of facility. After having a more complete understanding of the actual costs in oversight and enforcement for Solid Waste Management programs, ADEQ was able to develop a comprehensive fee schedule that fairly assessed fees against each class of facility or entity that is representative of the actual costs to ADEQ for carrying out regulatory activities for such facility or entity.

The development of this fee schedule began with CPI adjustments used for all existing fees. With all existing fees being over a decade old, and with those statutory fees dating back to the early 1990s, this initial CPI adjustment was a critical step as current fee levels were no longer representative of current economic conditions or costs to ADEQ. The CPI adjustment methodology for those fees dating back to 2012 utilizes the Consumer Price Index for All Urban Consumers (CPI-U) for the Phoenix-Mesa-Scottsdale, AZ Area (regional CPI). This regional CPI was selected as most representative to the costs of ADEQ, which largely operates out of Phoenix metro area. To note, this regional CPI began being calculated in 2002. For the two fees dating to the early 1990s, the landfill disposal fee and new tire sale fee, the national CPI was used. This adjustment for these fees based on the national CPI was necessary to bring these two fees to current levels as the regional CPI is not available for the full duration of these fees.

By employing these CPI adjustments to make existing fees current and reflective of subsequent inflation following establishment of the fees, ADEQ had a contemporary fee baseline from which new fees and further adjustments could be fairly assessed that would impose the least burden and cost.

Following these CPI adjustments, ADEQ evaluated Agency functions and regulatory costs for each class of facility or entity. Based on these actual costs for each class of facility or entity, ADEQ established new

fees and made further adjustments to existing fees. These fees were established to both be reflective of the actual cost to ADEQ associated with carrying out the Department's regulatory responsibilities for each class of facility or entity as well as take into consideration the relative burden these fees posed.

Each of these fees is presented in the fee tables and discussed in further detail in the section-by-section explanation to follow.

Annual CPI adjustments: This rule implements an annual regional CPI adjustment to ensure fees remain current and adequate to cover rising costs against inflation. The methodology involves multiplying the fee amount within the rule by the regional CPI as of the close of the 12-month period ending on October 30 for the most recent year, and then dividing by the regional CPI as of the close of the 12-month period ending on October 30 for the year 2024 (base year) except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year to ensure predictability and stability for those subject to the fees. The CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor available at: https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS48ASA0,CUUSS48ASA0. The first adjustment will occur in July 2026 following the publication of the October regional CPI in 2025.

Fee Tables: below are a series of fee tables for all the fees being established, adjusted, or incorporated under this rule.

Facility Category	Current Fees	New Fees	Initial
Landfills under 60,000 tons annually	$2,500	**$5,000**	**Plan Review**
Landfills 60,000 tons to under 225,000 tons annually	$7,500	**$10,000**	**Plan Review**
Landfills 225,000 tons or more annually	$12,500	**$18,565**	**Plan Review**
Tire Site Subject to Plan Review	N/A	**$5,000**	**Plan Review**
Self-certification Tire Site	$250	**$3,000**	**$3,600**
Used Tire Site	$75	**$1,500**	**$1,800**
Waste Tire Site	$75	**$2,000**	**$2,400**
Self-certification Transfer Station	$500	**$3,000**	**$3,600**
Best Management Practice Transfer Stations	N/A	**$1,500**	**$1,800**
Used Oil Processor	N/A	**$7,500**	**$9,000**
Used Oil Burner	N/A	**$12,500**	**$15,000**
Used Oil Transporter	N/A	**$1,500**	**$1,800**
Used Oil Marketer	N/A	**$1,500**	**$1,800**
BMW Transporter	$750	**$1,500**	**$1,800**
BMW Treatment & Disposal	N/A	**$12,500**	**Plan Review**
BMW Storage	N/A	**$7,500**	**Plan Review**
BMW Transfer	N/A	**$3,000**	**Plan Review**
Septage Hauler - county inspection	$75	**$225**	**$270**
Septage Hauler - ADEQ inspection	$75	**$550**	**$660**
Special Waste Generator of Petroleum Contaminated Soil (PCS)	N/A	**$750**	**$900**
Special Waste Generator of Auto Shredder Fluff (ASF)	N/A	**$3,000**	**$3,600**

Special Waste Shipper	N/A	**$1,500**	**$1,800**
Special Waste Disposal, Treatment, or Storage	N/A	**$5,000**	**Plan Review**
Landfills in post-closure care	N/A	**$3,500**	**Plan Review**
Lead Acid Battery Collection Site	N/A	**$675**	**$810**

Fees for Plan Review of New Solid Waste Facilities	**Current Fees**		**New Fees**	
	Initial	**Maximum**	**Initial**	**Maximum**
Solid Waste Landfills	$20,000	$200,000	$20,000	**$297,047**
Non-APP requirements for Non-MSWLFs operating under an APP	$2,000	$50,000	$2,000	**$74,262**
Other Solid Waste Facilities Subject to Plan Approval	$10,000	$100,000	$10,000	**$148,524**
	Current Fees		**New Fees**	
Fees for Modifications to Solid Waste Facility Plans	**Initial**	**Maximum**	**Initial**	**Maximum**
Solid Waste Landfills - Type IV	$1,500	$150,000	$1,500	**$222,786**
Solid Waste Landfills - Type III	$750	$75,000	$750	**$111,393**
Other Solid Waste Facilities Subject to Plan Approval - Type IV	$750	$75,000	$750	**$111,393**
Other Solid Waste Facilities Subject to Plan Approval - Type III	$500	$50,000	$500	**$74,262**
	Current Fees		**New Fees**	
Fees for Review of Financial Responsibility Plans for Facilities	**Initial**	**Maximum**	**Initial**	**Maximum**
Annual Review for Solid Waste Landfills	$600	Flat Fee	**$891**	**Flat Fee**
Other Solid Waste Facilities	$200	$5,000	$200	**$7,426**
	Current Fees		**New Fees**	
Hourly Rate	$122	Per Hr	**$181**	**Per Hr**

Solid Waste General Permits	**Current Fees**		**New Fees**	
Category	Initial Fee	Annual Fee	**Initial Fee**	**Annual Fee**
Collection, Storage and Transfer-Standard	$750	$100	**$1,114**	**$149**
Collection, Storage and Transfer-Complex	$7,500	$1,000	**$11,139**	**$1,485**
Treatment-Standard	$1,000	$100	**$1,485**	**$149**
Treatment-Complex	$10,000	$1,000	**$14,852**	**$1,485**
Disposal	$15,000	N/A	**$22,279**	**N/A**

Solid Waste Disposal Fees	**Current Fees**		**New Fees**	
	Fee	Unit of Measure	**Fee**	**Unit of Measure**
For Each Ton of Solid Waste	$0.25	Per Ton	**$0.58**	**Per Ton**
Six Cubic Yards (CY) of Uncompacted Solid Waste	$0.25	Per CY	**$0.58**	**Per CY**

Three Cubic Yards (CY) of Compacted Solid Waste	$0.25	Per CY	**$0.58**	**Per CY**
Facilities Recycling Solid Waste from Secondary Waste Water	$0.13	Per Ton	**$0.29**	**Per Ton**
Waste Disposed in a Solid Waste Landfill not regulated by ADEQ	$0.25	Per Ton	**$0.58**	**Per Ton**
Local Public Facility - Population of Political Subdivisions	$0.07	x Population Served	**$0.16**	**x Population Served**

Special Waste Disposal	**Current Fees**		**New Fees**	
	Fee	Unit of Measure	**Initial Fee**	**Unit of Measure**
Petroleum Contaminated Soils Disposal Fee	$4.50	Per Ton	**$6.68**	**Per Ton**
Auto Shredder Fluff Disposal Fee	$4.50	Per Ton	**$6.68**	**Per Ton**
Annual Maximum Disposal Fee per Generator Site	$45,000	Annual Maximum	**$68,835.67**	**Annual Maximum**

New Tire Sale	**Current Fees**		**New Fees**	
	Fee	Maximum	**Fee**	**Maximum**
	2% of retail	$2.00/tire	2% of retail	**$4.66/tire**

Implementation Schedule: In furtherance of ADEQ's goal to ensure the fees impose the least burden and cost, ADEQ evaluated the feasibility of an implementation schedule that balances the fiscal health of SWP and the budget practices of the regulated community subject to the fees. Currently, ADEQ sends out invoices for registration fees to correspond with the calendar year. However, a recurring point of discussion throughout the rulemaking was the concern of implementing a new fee or fee increase in the middle of the fiscal year for many counties, municipalities, and other political subdivisions. In response to these concerns and comments, while the rule and fees would become effective as of January 2025, fees will be implemented pursuant to a schedule for CY2025 to accommodate the fiscal needs of counties, municipalities, and other political subdivisions.

To this end, the annual registration fee for CY2025 for increased existing fees will be divided between two separate invoices. The first invoice for this first annual registration fee will reflect current billing, with the invoice at the current fee level to be sent out in January 2025. The second invoice will be delayed until July 2025, to coincide with the fiscal year, and will be for the remaining amount of the annual registration fee, reflecting the amount already paid on the first invoice.

As an example, under R18-13-501(E), the annual registration fee for a self-certification transfer facility is increased from $500 to $3,000 on the effective date of the rule. ADEQ will send the facility an invoice for $500 in January 2025 per the existing billing rate prior to the rule. Subsequently, ADEQ will send a second invoice in July 2025 for $2,500. Thereafter, beginning in 2026, the facility will be invoiced once for $3,000, as adjusted by regional CPI, each January to coincide with the calendar year billing cycle.

For new annual registration fees, the first annual registration fee as established under the rule will be delayed until July 2025 to coincide with the fiscal year. As an example, if a political subdivision operated

a lead acid battery collection facility, a new fee of $675 would be due "within 30 days of invoice receipt", under R18-13-1901(B), so that the invoice will be sent on or after July 1. Following this initial billing to coincide with the fiscal year for the first year of implementation, billing will align to the calendar year billing cycle in January 2026.

In addition to adjusted and new annual registration fees, this implementation schedule includes quarterly landfill disposal and special waste tonnage fees, resulting in the disposal and tonnage fees for the first calendar quarter of 2025 at the new fee rates to coincide with the coming fiscal year, and will be invoiced on or after July 1, 2025. Following this initial billing to coincide with the fiscal year for the first quarter of 2025, quarterly billing for landfill disposal and special waste tonnage fees will return to the calendar year billing cycle.

Below are a series of tables that describe the implementation for each facility type and fee in detail:

Facility Category	**Reporting Cycle**	**Fee**	**Invoice Timing**
All Landfills Tonnage for Solid Waste	Q4 2024	$0.25 per ton	March 2025
Special Waste Receiving Facilities	Q4 2024	$4.50 per ton	March 2025
All Landfills Tonnage for Solid Waste	Q1 2025	$0.58 per ton	July 2025
Special Waste Receiving Facilities	Q1 2025	$6.68 per ton	July 2025
All Landfills Tonnage for Solid Waste	Q2 2025	$0.58 per ton	September 2025
Special Waste Receiving Facilities	Q2 2025	$6.68 per ton	September 2025
Landfills under 60,000 tons annual registration	Cal. Year 2025 Pt. 1	$2,500	January 2025
Landfills under 60,000 tons annual registration	Cal. Year 2025 Pt. 2	$2,500	July 2025
Landfills ≥60,000 and < 225,000 tons annual registration	Cal. Year 2025 Pt. 1	$7,500	January 2025
Landfills ≥60,000 and < 225,000 tons annual registration	Cal. Year 2025 Pt. 2	$2,500	July 2025
Landfills ≥225,000 tons or more annual registration	Cal. Year 2025 Pt. 1	$12,500	January 2025
Landfills ≥225,000 tons or more annual registration	Cal. Year 2025 Pt. 2	$6,065	July 2025
Landfills in post-closure care (New)	Calendar Year 2025	$3,500	July 2025
Tire Site Subject to Plan Review (New)	Calendar Year 2025	$5,000	July 2025
Self-certification Tire Site	Cal. Year 2025 Pt. 1	$250	January 2025
Self-certification Tire Site	Cal. Year 2025 Pt. 2	$2,750	July 2025
Used Tire Site	Cal. Year 2025 Pt. 1	$75	January 2025
Used Tire Site	Cal. Year 2025 Pt. 2	$1,425	July 2025
Waste Tire Site	Cal. Year 2025 Pt. 1	$75	January 2025
Waste Tire Site	Cal. Year 2025 Pt. 2	$1,925	July 2025
Self-certification Transfer Station	Cal. Year 2025 Pt. 1	$500	January 2025
Self-certification Transfer Station	Cal. Year 2025 Pt. 2	$2,500	July 2025
Best Management Practice Transfer Stations (New)	Calendar Year 2025	$1,500	July 2025
Used Oil Processor (New)	Calendar Year 2025	$7,500	July 2025
Used Oil Burner (New)	Calendar Year 2025	$12,500	July 2025

Used Oil Transporter (New)	Calendar Year 2025	$1,500	July 2025
Used Oil Marketer (New)	Calendar Year 2025	$1,500	July 2025
Biohazardous Medical Waste (BMW) Transporter	Cal. Year 2025 Pt. 1	$750	January 2025
BMW Transporter	Cal. Year 2025 Pt. 2	$750	July 2025
BMW Treatment & Disposal (New)	Calendar Year 2025	$12,500	July 2025
BMW Storage (New)	Calendar Year 2025	$7,500	July 2025
BMW Transfer (New)	Calendar Year 2025	$3,000	July 2025
Septage Hauler - county inspection	Cal. Year 2025 Pt. 1	$75	January 2025
Septage Hauler - county inspection	Cal. Year 2025 Pt. 2	$150	July 2025
Septage Hauler - ADEQ inspection (New)	Calendar Year 2025	$550	July 2025
Special Waste Generator of Petroleum Contaminated Soil (PCS) (New)	Calendar Year 2025	$750	July 2025
Special Waste Generator of Auto Shredder Fluff (ASF) (New)	Calendar Year 2025	$3,000	July 2025
Special Waste Shipper (New)	Calendar Year 2025	$1,500	July 2025
Special Waste Disposal, Treatment, or Storage Facility (New)	Calendar Year 2025	$5,000	July 2025
Lead Acid Battery Collection Site (New)	Calendar Year 2025	$675	July 2025

	New Fees		**Invoice Timing**	
Fees for Plan Review of New Solid Waste Facilities	**Initial**	**Maximum**	**Reporting Cycle**	**Invoice Date**
Solid Waste Landfills	$20,000	$297,047	Jan 2025 - June 2025	At time of issuance
Non-APP requirements for Non-MSWLFs operating under an APP	$2,000	$74,262	Jan 2025 - June 2025	At time of issuance
Other Solid Waste Facilities Subject to Plan Approval	$10,000	$148,524	Jan 2025 - June 2025	At time of issuance
	New Fees		**Invoice Timing**	
Fees for Modifications to Solid Waste Facility Plans	**Initial**	**Maximum**	**Reporting Cycle**	**Invoice Date**
Solid Waste Landfills - Type IV	$1,500	$222,786	Jan 2025 - June 2025	At time of issuance
Solid Waste Landfills - Type III	$750	$111,393	Jan 2025 - June 2025	At time of issuance
Other Solid Waste Facilities Subject to Plan Approval - Type IV	$750	$111,393	Jan 2025 - June 2025	At time of issuance
Other Solid Waste Facilities Subject to Plan Approval - Type III	$500	$74,262	Jan 2025 - June 2025	At time of issuance
Fees for Review of Financial Responsibility Plans for Facilities	**New Fees**		**Invoice Timing**	
	Initial	**Maximum**	**Reporting Cycle**	**Invoice Date**
Annual Review for Solid Waste Landfills	$891	Flat Fee	Jan 2025 - June 2025	At time of submittal
Other Solid Waste Facilities	$200	$7,426	Jan 2025 - June 2025	At time of submittal
All Plan Reviews	**New Fees**		**Invoice Timing**	

Hourly Rate	$181	Per Hour	Jan 2025 - June 2025	At time of submittal

Solid Waste Disposal Fees	**New Fees**		**Invoice Timing**	
	Fee	Unit of Measure	**Reporting Cycle**	**Invoice Date**
For Each Ton of Solid Waste	$0.58	Per Ton	Q1 2025	July 2025
Six Cubic Yards (CY) of Uncompacted Solid Waste	$0.58	Per CY	Q1 2025	July 2025
Three Cubic Yards (CY) of Compacted Solid Waste	$0.58	Per CY	Q1 2025	July 2025
Facilities Recycling Solid Waste from Secondary Waste Water	$0.29	Per Ton	Q1 2025	July 2025
Waste Disposed in a Solid Waste Landfill not regulated by ADEQ	$0.58	Per Ton	Q1 2025	July 2025
Local Public Facility - Population of Political Subdivisions	$0.16	x Population Served	Q1 2025	July 2025

Solid Waste General Permits	**New Fees**		**Invoice Timing**	
Category	Initial Fee	Annual Fee	**Reporting Cycle**	**Invoice Date**
Collection, Storage and Transfer-Standard	$1,114	$149	Calendar Year 2025	At time of submittal
Collection, Storage and Transfer-Complex	$11,139	$1,485	Calendar Year 2025	At time of submittal
Treatment-Standard	$1,485	$149	Calendar Year 2025	At time of submittal
Treatment-Complex	$14,852	$1,485	Calendar Year 2025	At time of submittal
Disposal	$22,279	N/A	Calendar Year 2025	At time of submittal

	New Fees		**Invoice Timing**	
	Fee	Unit of Measure	**Reporting Cycle**	**Invoice Date**
Petroleum Contaminated Soils Disposal Fee	$6.68	Per Ton	Q1 2025	July 2025
Auto Shredder Fluff Disposal Fee	$6.68	Per Ton	Q1 2025	July 2025
Annual Maximum Special Waste Disposal Fee per Generator Site	$68,835.67	Annual Maximum	Q1 2025	July 2025

	New Fees		**Reporting Date**	
	Fee	Maximum	**Reporting Cycle**	**Reporting Date**
New Tire Sales	2% of retail	$4.66/tire	Q2 2025	July 2025

Submission of Fee Increases Exceeding CPI to Joint Legislative Budget Committee: A.R.S. § 41-1008(A)(3) provides that "an agency may increase a fee in an amount that exceeds the percentage of change in the average consumer price index" if the "agency submits the fee increase to the joint legislative budget committee for review before the fee is increased." Under this rule, seven fees are increased beyond

CPI. These fees include registration fees for solid waste landfills accepting less than 60,000 tons of waste annually, waste tire sites, including waste tire sites subject to self-certification, used tire sites, transfer stations subject to self-certification, biohazardous medical waste transporters, and septage haulers.

Pursuant to this statutory requirement, ADEQ submitted these seven fees increased beyond CPI to the Joint Legislative Budget Committee for the Committee's review.

Informal Comment: ADEQ actively facilitated informal comments and feedback from the public and stakeholders, including three stakeholder meetings held on May 30, 2024, June 20, 2024, and July 18, 2024. In these meetings ADEQ presented all new and adjusted fee amounts proposed, presented and explained draft rule text, explained the need and methodology for the annual regional CPI adjustment, and addressed and answered questions and concerns raised throughout the stakeholder engagement process, including:

- The purpose and need for post-closure care landfill fees. ADEQ explained that after a landfill closes it still requires monitoring for a period of 30 years after closure, commonly referred to as the post closure care period. During this time, the landfill must be monitored for ground water and methane levels as well as maintenance of the cap. ADEQ still has a responsibility of oversight of these activities to ensure those are being conducted. This oversight includes inspections and record management conducted by ADEQ. The annual fee during this duration is necessary for cost-recovery to ADEQ for regulatory activities conducted during this period.
- Whether used oil collection centers will be subject to fees. ADEQ responded that used oil collection centers will not be subject to fees under this rule. This rule incorporates registration requirements as they currently exist in statute into rule. Only handlers of used oil that are classified as transporters, marketers, processors, and burners are subject to these new fees.
- With the incorporation of the landfill disposal fee into rule, impact to the Recycling Fund and recycling grant program. ADEQ stated the per ton disposal fee will continue to be deposited into the Recycling Fund as it currently is. This rulemaking does not change or eliminate the Recycling Fund or recycling grant program.
- Reasoning for municipal and non-municipal landfills now being subject to the same annual registration fee under the proposed rule. ADEQ explained the fees are based on the cost to ADEQ for performing inspections, issuing permits, administrative costs, costs associated with data management, as well rule development and implementation. While the regulations can vary between operations, the costs are based on the time it takes to inspect and perform activities required of ADEQ for these sites which compare equally in Department cost.

This engagement with the public and stakeholders was a critical element in developing a fee program that is fairly assessed and presents the least burden and cost to the regulated community. For example, from discussion with stakeholders, ADEQ made the determination that lowering the annual fee for biohazardous medical waste transfer facilities from $7,500 to $3,000 was appropriate to mirror the fee for other types of transfer facilities engaged in activity subject to similar regulatory oversight to ensure this facility type is not subject to an unduly burdensome or disproportional fee. Another example was the decision to not adjust the initial registration fee for plan review or subject it to an annual CPI adjustment to improve clarity and ease of initial application for facilities subject to plan review. A final example is the decision to remove registration fees, both initial and annual, for composting facilities. After discussions and feedback from the regulated community, it was determined that fees at this time for composting

facilities are premature and more work to develop and facilitate composting in the state is needed prior to implementing related facility fees.

A recurring point of discussion during the informal comment period was the concern of implementing a fee increase in the middle of the fiscal year for many counties, municipalities, and other political subdivisions. In response, ADEQ created an implementation schedule more compatible with the fiscal year, as discussed above.

Section by Section Explanation of Proposed Rule: Below is an explanation of the substantive provisions of each section of the rule. Underlined text in the article or section title indicates new rule language. Struck through text indicates deletion of existing rule language. Italicized Article or Section titles indicates a new article or section.

ARTICLE 4. SOLID WASTE FACILITIES SUBJECT TO BEST MANAGEMENT PRACTICES

R18-13-401. Definitions. Adds definition clarifying "Department" means the Arizona Department of Environmental Quality and definitions for "material recovery facility" and "recyclable solid waste" as those terms are used in the exemption for transfer facilities subject to best management practices in new R18-13-402.

R18-13-402. Solid Waste Facilities Subject to Best Management Practices; Fees. Establishes a new initial registration fee of $1,800 and annual renewal fee of $1,500 for transfer facilities with a daily throughput of 180 cubic yards or less, but not including material recovery facilities, as defined, that are currently exempted from self-certification transfer facilities under Article 5, and for waste tire sites that are subject to best management practices pursuant to A.R.S. § 49-762.02. Includes a provision that registration under R18-13-1211 as a waste tire collection site satisfies registration and fee requirements under this section for waste tire sites. Inclusion of waste tire sites under this section reflects the dual regulation of these tire sites under both Title 44 and Title 49 of the Arizona Revised Statutes.

Includes language for an annual adjustment to these fees based on the regional CPI.

ARTICLE 5. REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION

R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees. Removes outdated language referencing previous 2012 fee provisions. Standardizes and increases the existing initial registration and annual registration fees for transfer facilities, waste tire sites, and waste tire shredding and processing facilities subject to self-certification pursuant to A.R.S. § 49-762.01 to $3,600 and $3,000, respectively. Includes language for an annual adjustment to these fees based on the regional CPI.

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

R18-13-702. Solid Waste Facility Plan Review Fees. Removes outdated language referencing previous 2012 fee provisions. Increases the maximum fee amounts in the Fee Tables for maximum fees relating to plan review, but excluding the initial fee, by the regional CPI adjustment. Increases the hourly billing rate for plan review and the annual review for solid waste landfills flat fee by the regional CPI adjustment. Eliminates the fee for modifications to solid waste facility plans for the Solid Waste Landfills – Type IV – RD&D category as ADEQ does not currently have authority to facilitate this type of plan modification.

Includes language for an annual adjustment to the maximum fees and hourly rate based on the regional CPI. The annual adjustment applies to the maximum fee amounts in the Fee Tables, the annual review for solid waste landfills flat fee, and the hourly billing rate, but does not apply to the initial plan review fees.

ARTICLE 8. GENERAL PERMITS

R18-13-801. General Permit Fees. Increases the fees for all existing general permit fees, including initial and annual, by the regional CPI adjustment. Includes language for an annual adjustment to these fees based on the regional CPI.

ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA

R18-13-1103. General Requirements; License Fees. Removes outdated language referencing previous 2012 fee provisions. Establishes a new tiered fee structure for septage hauler license fees. New initial license fee of $660 and annual license fee of $550 for septage haulers whose vehicles are subject to an inspection conducted by ADEQ. Increased initial license fee of $270 and annual license fee of $225 for septage haulers whose vehicles are subject to an inspection conducted by a county pursuant to a delegation agreement with ADEQ. This new fee structure shall be applicable to those licensees who renew their license after the effective date of the rule. To coincide with the implementation schedule, for CY2025 the first payment of the increased fee for those septage haulers whose vehicles are inspected by the counties shall be for the current fee amount of $75 payable through the myDEQ online portal. The second payment of this increased fee for CY2025 shall be made pursuant to an invoice sent in July 2025 to coincide with the fiscal year. The payment of the new fee for those septage haulers whose vehicles are inspected by ADEQ shall be invoiced in July 2025 in accordance with the implementation schedule for new fees.

A fee for those inspected by the county and a separate fee for those inspected by ADEQ is a two-tier system that reflects that fees be fairly assessed as there is a higher cost to ADEQ associated with conducting inspections throughout the state. This higher tier of fees is needed for proper cost-recovery to ADEQ.

Further adds new language clarifying inspections may be required for vehicle license renewal. Includes language for an annual adjustment to these fees based on the regional CPI.

R18-13-1107. Reinstatement. New subsection (B) stating that an expired or lapsed septage hauler license may be renewed by payment of the appropriate lower annual license fee instead of the higher initial license fee.

ARTICLE 12. WASTE <u>TIRES; USED</u> TIRES

R18-13-1201. Definitions. Adds a new definition of “waste tire collection site” as that term is defined in A.R.S. § 44-1301.

R18-13-1211. Registration of New Waste Tire Collection Sites; Fee. Removes outdated language referencing previous 2012 fee provisions. Increases the existing initial registration fee and annual registration fee for waste tire collection sites to $2,400 and $2,000, respectively. Includes language for an annual adjustment to these fees based on the regional CPI.

R18-13-1212. Registration of Outdoor Used Tire Sites; Fee. Removes outdated language referencing previous 2012 fee provisions. Increases the existing initial registration fee and annual registration fee for

outdoor used tire sites to $1,800 and $1,500, respectively. Includes language for an annual adjustment to these fees based on the regional CPI.

R18-13-1212.01 Waste Tire Collection Site Subject to Plan Approval; Fees. Establishes a new annual registration fee of $5,000 for waste tire collection sites that are required to obtain plan approval pursuant to A.R.S. § 49-762(A)(7). Includes language for an annual adjustment to these fees based on the regional CPI.

R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee. This section provides that a tire facility subject to registration under more than one section is only required to pay the registration fees for the section with the highest registration fees. This rule adds to this single-fee provision waste tire collection sites subject to plan approval under new R18-13-1212.01.

ARTICLE 13. SPECIAL WASTE AND BEST MANAGEMENT PRACTICES FOR SHREDDER RESIDUE

R18-13-1306. ~~Reserved~~ Fees. New applicants for special waste identification numbers shall submit a new initial registration fee for each special waste operation, excluding special waste receiving facilities subject to plan approval: $3,600 for a generator of shredder residue and $1,800 for a special waste shipper. There shall be billed an annual registration fee for each class of operation: $3,000 for a generator of shredder residue, $5,000 for a special waste receiving facility, defined in rule as an off-site location to which special waste is sent to be treated, recycled, stored, or disposed, and $1,500 for a special waste shipper. Solid waste landfills are exempt from these fees. Includes language for an annual adjustment to these fees based on the regional CPI.

R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles; Fees. Increases the existing tonnage fee for shredder residue that is transported to a facility regulated by the ADEQ for treatment, storage, or disposal by the regional CPI adjustment to $6.68. Deletes unnecessary language referring to a calculation of shredder residue received based on compacted or uncompacted cubic yard amounts as this is not a receiving calculation that is used. Instead, preserves the tonnage calculation. Increases the existing fee cap by the regional CPI adjustment to $66,835.67. Includes language for an annual adjustment to these fees based on the regional CPI.

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS

R18-13-1409. Transporter License; Fees; Transportation. Eliminates the current biohazardous medical waste (BMW) transporter license fee structure of hourly billing and replaces with new flat fees. Further eliminates now-obsolete provisions relating to an appeal process concerning billing amounts. The new fee structure includes an increased initial application fee of $1,800, an increased annual fee of $1,500, an amendment fee of $350, and a reduced quinquennial renewal fee from $2,000 to now match the annual fee of $1,500. Includes language for an annual adjustment to these fees based on the regional CPI.

R18-13-1410. Storage, Transfer, Treatment, and Disposal Facilities; Facility Plan Approval; Fees. Establishes new annual registration fees for BMW storage, disposal, treatment, and transfer facilities. The annual registration fee for disposal and treatment facilities is $12,500, for storage facilities is $7,500, and for transfer facilities is $3,000. Includes language for an annual adjustment to these fees based on the regional CPI.

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

R18-13-1606. Fees. Increases the existing tonnage fee for the treatment, storage, or disposal facility that first receives a shipment of PCS by the regional CPI adjustment from $4.50 to $6.68. Increases the existing fee cap by the regional CPI adjustment to $66,835.67. Establishes a new registration fee of $900 and annual registration fee of $750 for a generator of PCS. Establishes a new annual registration fee of $5,000 for special waste receiving facilities, defined for Article 16 as a treatment, storage, or disposal waste facility that has an approved special waste management plan pursuant to A.R.S. § 49-857. Solid waste landfills are exempt from this fee. Includes language for an annual adjustment to these fees based on the regional CPI.

ARTICLE 19. LEAD ACID BATTERY RECYCLING

R18-13-1901. Collection or Recycling Facility of Lead Acid Batteries; Registration; Fees. Establishes a new registration fee of $810 and new annual fee of $675 for collection or recycling facilities that accept lead acid batteries. Currently existing collection or recycling facilities that accept lead acid batteries have until March 1, 2025 to register with the Department. For purposes of this section, "lead acid battery" is defined as a battery with a core of elemental lead and a capacity of six or more volts that is suitable for use in a vehicle or a boat. Includes language for an annual adjustment to these fees based on the regional CPI.

ARTICLE 20. USED OIL

The federal used oil program, 40 CFR 279, as amended on January 1, 1997, is adopted by reference for the state of Arizona pursuant to A.R.S. 49-801, *et al.* For this purpose, this rule proposes new Article 20 to reflect this incorporation. While full incorporation of the federal program as currently administered by ADEQ pursuant to statute into rule is outside the scope of this rulemaking at this time, this rule proposes new Article 20 to reflect this incorporation as appropriate for the purpose of establishing necessary fees.

R18-13-2001. Definitions. Adds definitions based on incorporation of the federal program and 40 CFR 279. Includes defining "40 CFR 279" to refer to 40 CFR part 279, as amended on January 1, 1997, and no future editions or later amendments. Incorporates federal used oil program definitions for used oil handlers and the federal used oil program definition for used oil as modified by A.R.S. § 49-801.

R18-13-2002. Used Oil Handler Registration; Fee. Establishes a new registration fee for used oil handlers, as defined, required to obtain an EPA identification number as follows: for a used oil processor, $9,000, for a used oil burner, $15,000, for a used oil transporter, $1,800, and for a used oil fuel marketer, $1,800. Establishes new annual registration fees for used oil handlers as follows: for a used oil processor, $7,500, for a used oil burner, $12,500, for a used oil transporter, $1,500, and for a used oil fuel marketer, $1,500. Includes language for an annual adjustment to these fees based on the regional CPI.

R18-13-2003. Used Oil Collection Center Identification Number; Requirements. Codifies in rule current registration requirements for used oil collection centers, as defined. This involves requesting a used oil collection center identification number pursuant to A.R.S. § 49-802(C). To note, there are no fees for used oil collection centers contemplated in this rulemaking.

ARTICLE 21. SOLID WASTE LANDFILL REGISTRATION AND DISPOSAL FEES

R18-13-2101. Definitions. Deletes the definition of "full quarter" as now obsolete given new fee structure discussed in R18-13-2102 below. Adds new definitions of "local public facility" and "recycling residue" as used within the solid waste landfill disposal fee that is incorporated from statute in R18-13-2104.

R18-13-2102. Solid Waste Landfill Registration; Annual Registration Fee ~~for an Existing Solid Waste Landfill~~. Eliminates the current units of reported waste calculation methodology for municipal solid waste landfills that accept waste for only a portion of the "defined time period", as defined. Now the amount of waste received shall be determined solely by the reported tons of solid waste received on the disposal invoice over the defined time period. Eliminates the one-time initial registration fee.

Currently there are four different tiers of fees for municipal solid waste landfills based on size as follows: for a municipal solid waste landfill receiving less than 12,000 tons during the defined time period, an annual fee of $1,250; for the same receiving at least 12,000 tons but less than 60,000 tons, an annual fee of $2,500; for the same receiving at least 60,000 tons but less than 225,000 tons, an annual fee of $7,500; and for the same receiving at least 225,000 tons, an annual fee of $12,500. Non-municipal solid waste landfills pay an annual flat fee of $3,750 regardless of size. This rule proposes to eliminate the distinction between municipal and non-municipal for purposes of the annual registration fee under this Section and consolidate to three different tiers of fees based on size as follows: for a solid waste landfill receiving less than 60,000 tons, an annual fee of $5,000; for the same receiving at least 60,000 tons but less than 225,000 tons, an annual fee of $10,000; and for the same receiving at least 225,000 tons, an annual fee of $18,565.

Currently a solid waste landfill is subject to an annual fee of $1,250 from the time the landfill stops accepting waste until released from its obligation to provide financial assurance for closure. This rule proposes to increase this fee to $3,500 and extend this fee period from the time the landfill stops accepting waste now until the landfill has completed closure and is released from its obligation for post-closure care. The fees during post-closure care are necessary as there are ongoing obligations and oversight that occurs during this post-closure period. This includes inspections and record management conducted by ADEQ. The annual fee is necessary for cost-recovery to ADEQ for regulatory activities conducted during this period.

Includes language for an annual adjustment to these fees based on the regional CPI.

R18-13-2104. Solid Waste Landfill Disposal Fee; Exemptions. This is the first of two fees incorporated from statute. The landfill disposal fee is currently under A.R.S. § 49-836. This proposed rule incorporates the landfill disposal fee as currently implemented under statute into rule, including reporting, calculation, and exemptions, with each component of the fee adjusted based on a national CPI adjustment. This adjustment includes increasing the solid waste landfill tonnage disposal fee from $0.25 to $0.58; the waste from recycling residue from $0.13 to $0.29 and associated maximum from $15,000 to $34,942.20; and the population-based disposal fee for local public facilities, as defined, from $0.07 to $0.16. To note: the solid waste landfill disposal fee will not be subject to an annual adjustment based on the regional CPI.

ARTICLE 22. NEW TIRE SELLERS

This is the second fee incorporated from statute. The new tire seller fee is currently under A.R.S. § 44-1302. In the same way as the landfill disposal fee, this proposed rule is intended to incorporate the new tire seller fee as currently implemented into rule, subject to a specific CPI adjustment.

R18-13-2201. Definitions. Adds definitions for "motor vehicle" and "tire seller" to define those terms as they are used and applied under the new tire seller fee in statute.

R18-13-2202. New Tire Sellers; Fee. This proposed rule incorporates the 2% fee on the sale of new tires as currently implemented under statute into rule, with fee components adjusted based on a national CPI

adjustment. This fee has an implementation date of April 1, 2025 to ensure the Department of Revenue has the necessary time to prepare for the increase. This adjustment results in the increase of maximum fee per tire from $2 to $4.66, and from $1 to $2.33 for the sale by a manufacturer to a wholesaler or retailer of motor vehicles with a gross weight of under 10,000 pounds. This proposed rule preserves the $0.10 credit per tire a seller may claim for accounting and reporting related to the fee. Further maintains as currently provided in statute that the fee shall be remitted to the Department of Revenue. Includes language for an annual adjustment to these fees based on the regional CPI.

Fees are Fairly Assessed and Impose the Least Burden and Cost: Pursuant to A.R.S. § 49-104(B)(17), ADEQ is charged with ensuring all fees "be fairly assessed and impose the least burden and cost to the parties subject to the fees" based upon an evaluation of "the direct and indirect costs of the Department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses." This statutory mandate is reinforced by HB2367, which states in Section 17, Legislative Intent, that fees established pursuant to the bill be based upon "direct and indirect costs associated with the type of activity or facility that is assessed a fee."

To fulfill this statutory mandate, ADEQ reviewed actual costs to the Agency in conducting inspections and regulatory oversight for each class of facility and established fee amounts to ensure fees are reflective of those costs relating to the Department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses associated with the type of activity or facility that is assessed a fee. This review and analysis were strengthened by engagement with and feedback from the regulated community and stakeholders. ADEQ's assessment and examples are discussed further below in Part 10, "Economic, Small Business, and Consumer Impact".

Immediate Effective Date: Pursuant to A.R.S. § 41-1032(A)(1), and as stated in Part 4 of the Preamble, "Effective Date of the Rule", ADEQ seeks an immediate effective date for these rules in order to preserve public safety and protect human health and the environment by ensuring necessary funding for SWP regulatory activities. This immediate effective date reflects the urgency recognized by the Legislature with the passage of HB2367 pursuant to an emergency clause for immediate enactment. Delaying the effective date would mean that the rule would not be able to take effect in calendar year 2024, seriously jeopardizing the financial viability of the program and putting SWP inspection, enforcement, and services at risk.

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:

ADEQ did not reference any study for this proposed rule.

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 following discussion addresses each of the elements required for an economic, small business and consumer impact statement under A.R.S. § 41-1055.

Identification of the rulemaking: This rulemaking makes a number of changes to 18 A.A.C. 13, Solid Waste Management, including amendments to Articles 5, 7, 8, 11, 12, 13, 14, 16, and 21; amending Sections R18-13-501, R18-13-702, R18-13-801, R18-13-1103, R18-13-1211, R18-13-1212, R18-13-1307, R18-13-1409, R18-13-1410, R18-13-1606, R18-13-2102, and R18-13-2103, and their respective tables. Additionally, this rulemaking establishes new articles and sections, including Articles 4, 19, 20, and 22 and their respective sections, and new sections in existing Articles, including R18-13-1212.01, R18-13-1306, and R18-13-2104. The purpose of these changes is to both adjust existing fees and establish new fees throughout Solid Waste Management. This rulemaking also establishes in rule fees that currently only exist in statute.

Fees under this rulemaking can be categorized into two broad groups. One group being current fees paid by waste facilities and licensees that would be subject to an adjustment under this rulemaking. These facilities and licensees include publicly and privately-owned landfills, used and waste tire facilities, self-certification transfer facilities, biohazardous medical waste transporters, septage haulers, and special waste facilities that receive shredder residue and petroleum contaminated soil (PCS). The second group of fees are those established under this rulemaking for the first time. Facilities and entities subject to a new fee include transfer facilities subject to best management practices, used oil handlers, medical waste facilities that are permitted for storage or treatment, facilities generating or transporting special waste, landfills that enter into post-closure care, and collection and recycling facilities accepting lead acid batteries.

These rule changes are intended to collect fees to ensure the financial stability of Solid Waste Management programs, not to change the conduct of any regulated facilities or entities. The last time ADEQ undertook any substantive review and adjustments of fees within Solid Waste Management was in 2012. While fees established in 2012 represented a critical step towards the goal of full program sufficiency and stability, further work is necessary to realize this goal. Indeed, to date only half of all regulated facilities under Solid Waste Management are subject to fees for registration, inspection, and oversight notwithstanding ongoing statutory mandates.

Experience over the last several years has demonstrated the need for a comprehensive approach to fees throughout Solid Waste Management, one that promotes equal cost distribution amongst all regulated facilities and entities and ensures the financial health of Solid Waste Management as a whole for the effective and efficient carrying out of the Program's mission.

ADEQ's goal in this rulemaking is to adjust and establish fees throughout Solid Waste Management that will sustain critical programs while avoiding disproportionate impact on any one group of stakeholders or regulated entities. Currently, ADEQ's annual costs to administer all solid waste programs are estimated to total $3.5 million per year. However, current annual registration fee revenue is estimated at roughly $500,000. Other revenue sources include the 3.5% of the Waste Tire Fund allocated to the Solid Waste Fee Fund based upon the number of tires sold and the special waste tonnage tipping fee based upon the amount of special waste disposed within the state. While variable, these other revenue sources are critical, representing approximately half of revenues into the Solid Waste Fee Fund. ADEQ continues to operate with total revenues that are insufficient to cover costs. The increases in existing fees and newly established fees in this rulemaking are now projected to contribute and ultimately result in approximately $2.1 million in additional fee revenue for the Solid Waste Fee Fund.

Regulatory Objective: The Waste Program Division within ADEQ preserves and protects public health and the environment by reducing the risk associated with waste management, contaminated sites, and regulated substances. To fulfill this objective, ADEQ carries out a number of Agency functions corresponding to regulatory and oversight activities for the approximately 2,000 different facilities and entities that fall under Solid Waste Program (SWP) regulation, including: administrative operations; inspections, including pre- and post-inspection activity encompassing historic data and permit review, case closure, and necessary filing; permitting and licensing; public records management; complaint response; and compliance assistance. It is critical that ADEQ has the ability to fully perform all necessary Agency functions to continue to carry out its mission to ensure the continued health of our solid waste ecosystem to preserve and promote public health and the environment.

Least Burden and Cost: A.R.S. § 41-1052(D)(3) requires ADEQ to demonstrate it has selected the alternative with the least burden and cost necessary to achieve the underlying regulatory objective. Similarly, pursuant to A.R.S. § 49-104(B)(17), ADEQ is charged with ensuring all fees "be fairly assessed and impose the least burden and cost to the parties subject to the fees" based upon an evaluation of "the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses." This statutory mandate is reinforced by HB2367, which states in Section 17, Legislative Intent, that fees established pursuant to the bill be based upon "direct and indirect costs associated with the type of activity or facility that is assessed a fee."

In the context of this solid waste fees rule, ADEQ has interpreted this requirement to mean collecting fee amounts necessary to ensure a self-funded and sustainable SWP to satisfy ADEQ's detailed requirements to protect and enhance public health and the environment as specified in A.R.S. Title 49, Chapter 4, Solid Waste Management.

Based on ADEQ's interpretation of the statutory mandate that the rule impose the least burden and cost, ADEQ evaluated costs for regulating each type of facility and entity and set fees accordingly. ADEQ continued throughout the rulemaking process to adjust the fee proposal to impose the least burden and cost while still ensuring overall fee levels necessary to ensure a self-funded and sustainable SWP. Examples include:

- Establishing separate registration fee amounts in R18-13-1103 for septage haulers based on whether ADEQ is tasked with conducting annual inspections or such inspections are handled by counties to be reflective of actual costs to ADEQ.
- Setting an annual registration fee in R18-13-1410 specifically for biohazardous medical waste transfer facilities to ensure fees are commensurate with ADEQ's related regulatory costs and corresponds to other transfer facility fees.
- Leaving initial fees for solid waste plan review at their current levels in R18-13-702 to improve clarity and ease of initial application for facilities subject to plan review while still ensuring necessary cash flow to ADEQ to facilitate commencing facility plan reviews.
- Adjusting the annual registration fee for the largest class of landfills, those that annually receive 225,000 or more tons of waste, by the regional CPI instead of the initial, higher annual registration fee proposed in the NPRM.
- Changing the first annual registration fee of increased fees so that payment of the fee will occur over two invoices as well as delaying payment of new annual registration fees and first quarter landfill

disposal and special waste tonnage until July 2025 to correspond with the fiscal year. Following any initial invoicing or other change for the first year of implementation, billing for facilities and entities will return to a single invoice for all new and adjusted annual registration fees for the calendar year billing cycle in January 2026.

- Setting back the annual CPI adjustment to July instead of January, coinciding with the fiscal year. This affords stakeholders more time in preparing budgets aligned with the fiscal year.
- Setting an annual cap of 4% on the CPI adjustment of the fee amount of the preceding year. This CPI cap will promote stability and predictability year-on-year for stakeholders during budgeting and cost forecasting.

Fairly Assessed: To ensure the fees adjusted and established under this rulemaking be fairly assessed against each member of the regulated community subject to them, ADEQ conducted extensive stakeholder engagement, including three rounds of stakeholder meetings to present all proposed fee levels, explain the basis for the fees, provide detail on the need for and methodology of the annual CPI adjustments, and present rule language. ADEQ was able to solicit productive feedback from the regulated community. This feedback guided ADEQ in assessing and adjusting proposed fee levels and implementation to impose the least burden on members of the regulated community to the fullest extent possible.

In addition to engagement with and feedback from the regulated community, ADEQ reviewed costs associated with Agency functions in carrying out regulated activities, with costs identified and distinguished by facility type. Based upon these costs, ADEQ employed the fee methodology discussed in Part 7 of the Preamble, "Explanation of Fee Methodology", that set fees for each class of facility or entity.

Implementation Schedule: In furtherance of ADEQ's goal to ensure the proposed fees impose the least burden and cost, ADEQ evaluated the feasibility of an implementation schedule that balances the fiscal health of SWP and the budget constraints of the regulated community subject to the fees. Currently, ADEQ sends out invoices for registration fees to correspond with the calendar year. However, a recurring point of discussion throughout the rulemaking process was the concern of implementing a new fee or fee increase in the middle of the fiscal year for many counties, municipalities, and other political subdivisions. As such, while the rule and fees would become effective as of January 2025, fees will be implemented pursuant to a schedule for CY2025 to accommodate the fiscal needs of counties, municipalities, and other political sub-divisions.

This implementation schedule is discussed in greater detail and presented in a series of tables in Part 7 of the Preamble, "Implementation Schedule".

Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking: Stakeholders directly affected by this rulemaking include all 15 counties within the state, local municipalities, and the approximately 2,000 solid waste facilities and entities with different media types subject to ADEQ regulatory compliance and oversight under Solid Waste Management, as well as the general public. These facilities may be categorized as government and privately owned. Approximately 13% of all solid waste facilities and entities are owned by a political subdivision of the state, with the remaining being privately owned and operated, ranging from individual licensees to large, multistate businesses. These facilities and entities include solid waste transfer facilities of varying size and sophistication, from rural drop-site locations to city facilities, septage hauler licensees, waste tire

sites, off-site facilities registered for the treatment, storage, or disposal of auto-shredder residue, special waste transporters and generators, biohazardous medical waste transport companies, used oil handlers and collectors, facilities accepting lead acid batteries for collection or recycling, and both public and privately-owned landfills.

These facilities and entities are discussed in greater detail in the "Cost/Benefit Analysis" to follow.

Cost/Benefit Analysis: The estimated total impact for this rule is $12 million, which is the approximate total amount of increased fees across all programs. This estimated impact is subject to annual adjustment pursuant to the regional CPI adjustment. Approximately $1.8 million in increased fees will be collected pursuant to the proposed new and adjusted fees, including the special waste tonnage tipping fee, for regulated facilities and entities to be deposited into the Solid Waste Fee Fund. $6.7 million of increased fees will be collected through the fee on the sale of new tires as incorporated, with this cost borne by sellers and purchasers of new tires throughout the state. Of this $6.7 million, 3.5% or approximately $237,000 will be deposited to the Solid Waste Fee Fund pursuant to A.R.S. § 44-1305(B)(1), resulting in the total increased revenues to the Solid Waste Fee Fund of approximately $2.1 million. The remaining revenues from the fee on the sale of new tires are apportioned to the counties as provided in law. Finally, approximately $3.5 million in increased fees will be collected pursuant to the landfill disposal fee as incorporated to be deposited into the Recycling Fund pursuant to A.R.S. § 49-836.

ADEQ finds that the benefits associated with this rule change outweigh any foreseen or anticipated costs, as discussed in further detail below.

Probable benefits include:

- Allow the Recycling Fund to be more fully utilized for its intended purpose. Since the loss of General Fund revenues and the establishment of the fee-based program model in 2012, it has been necessary to expend from the Recycling Fund to cover management of solid waste regulatory programs. By ensuring full cost-recovery and program funding through this proposed rulemaking, expenditures from the Recycling Fund to cover solid waste management may be addressed, allowing appropriations under the Recycling Fund to be used for the stated purpose of that fund. ADEQ is committed to expenditures from the Recycling Fund being used for the stated purpose of grants and contracts for "research, demonstration projects, new technologies, market development and source reduction studies and implementation of the recommendations or reports prepared." *See* A.R.S. § 49-837(B)(1).
- Minimize public health risks from solid waste activities. Fee levels ensuring full cost-recovery to ADEQ for regulatory activities and program stability are critical to allow ADEQ to adequately perform all its duties relating to its mission to enhance public health and the environment, including inspections, monitoring, public education, compliance, and permitting.
- Ability to address the obligations cited in the 2021 Auditor General's Report. The Auditor General's September 2021 Performance Audit and Sunset Review Report noted ADEQ has not yet adopted all statutorily required rules. Specifically, the Report notes A.R.S. § 49-761 requires the Department to adopt various rules for solid waste facilities, such as requirements for storing, processing, treating, and disposing of solid waste; best management practices for these facilities; and financial assurance requirements for facility closure. The Report ultimately recommends such rules should be adopted as required by statute. By ensuring appropriate funding levels and future

programs security, ADEQ will be better positioned to undertake further rulemakings to address this recommendation of the Auditor General.

- Ability to address regulatory vacuum to protect public health and the environment as well as promote business development. With adequate and sustainable funding, SWP may increase inspection and enforcement activities to address and mitigate any regulatory vacuum within the solid waste universe. A greater ability to engage in regulatory activities provides a stronger deterrence to behavior that is harmful to the environment and public health, mitigates any unlevel playing field between competing facilities, and provides certainty for current and prospective businesses in estimating and planning for standards and operation requirements that must be adhered to.
- Ensure fee revenues continue to match increasing costs to ADEQ through annual regional CPI adjustments. The annual adjustments in the proposed rule will allow SWP to maintain fee levels commensurate with rising costs due to inflation to facilitate cost-recovery year over year and continued program stability.

This cost/benefit analysis includes an analysis of the following elements pursuant to A.R.S. § 41-1055(B)(3):

- Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking: probable benefits to ADEQ by the implementation of this rule include ensuring that SWP becomes sustainable, secure, and self-sufficient as a fully fee-based program. Additionally, benefits include allowing the Recycling Fund to be more fully utilized for its intended purpose, minimizing public health risks from solid waste activities, allowing ADEQ to address obligations cited in the 2021 Auditor General's Report, and to maintain fee levels commensurate with rising costs due to inflation to facilitate cost-recovery year on year and continued program stability. Probable benefits to ADEQ are discussed in greater detail in Part 7 of the Preamble. A probable cost to ADEQ in the implementation of this rulemaking is the administrative costs associated with administering these fees, including in accordance with the proposed implementation schedule and updating the fees annually pursuant to the regional CPI adjustment. No new full-time employees are necessary to implement or enforce this rule.

  The Arizona Department of Revenue is charged with the collection of the new tire sales fee, 2% of the sale price of a new tire capped at $2.00, pursuant to A.R.S. § 44-1302. This rulemaking incorporates this existing fee into rule at R18-13-2202, with an adjustment to the fee cap based upon CPI as well as a continuing annual regional CPI adjustment to the cap. As such, it will be necessary for the Department of Revenue to update each year the quarterly Motor Vehicle Waste Tire Fee return form to reflect the new fee cap. This will present a new administrative cost to the Department of Revenue in the timely updating and dissemination of the return form.

- Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking: probable benefits to political subdivisions by the implementation of this rule include the increased fee revenues of approximately $6.5 million apportioned to the counties based on registered motor vehicles for the administration of each county's waste tire program pursuant to the incorporation and adjustment of the new tire sales fee. ADEQ has heard that costs for running these waste tire programs have increased, creating additional strains on counties attempting to fully administer their respective programs as required by

A.R.S. § 44-1305. Increased fee revenues to be apportioned to the county waste tire programs will provide more money for each county to administer its required waste tire program. Additionally, increased fee revenues ensuring overall program health and self-sufficiency for SWP will strengthen the capacity for ADEQ to partner with counties and other political subdivisions to address key waste issues, such as wildcat, or illegal, dumping of waste, including increased enforcement activity and clean-up efforts.

Probable costs to political subdivisions from the implementation of this rule are the increased and new fees each political subdivision will be subject to for their county and municipal solid waste facilities and entities, as well as the increased landfill tonnage fees. Of the total approximately 2,000 solid waste facilities and entities regulated by ADEQ, the Agency estimates 13% are owned and operated by political subdivisions. This total includes approximately 26 active municipal landfills as well as 19 landfills currently in post-closure care.

Other facilities owned and operated by political subdivisions include:

- Used and waste tire sites. These include sites storing 100 or more used tires outdoors, as well as waste tire sites subject to self-certification and best management practices. Used and waste tire sites are often operated by and for counties under county waste tire collection programs. There are approximately 30 publicly operated used and waste tire sites.
- Transfer facilities subject to both self-certification and best management practices. To note, exempted from the definition of transfer facilities for purposes of registration fees are material recovery facilities where the incoming materials are primarily source separated recyclables and community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, or governmental recyclable solid waste. There are approximately 80 publicly operated transfer facilities maintained by counties and municipalities throughout the state.
- Septage haulers. While the majority of licensed septage hauler vehicles are privately owned and operated, some political subdivisions maintain licensed septage vehicles for purposes of sanitation and public departments. There are approximately 40 septage hauler licensed vehicles maintained by political subdivisions.
- Collection or recycling facility that accepts lead-acid batteries. Counties and municipalities often maintain registered household hazardous waste sites that accept lead-acid batteries. There are approximately 30 such registered facilities throughout the state.

- <u>Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:</u> With fees resulting in a fully-funded SWP, ADEQ may engage in greater compliance assistance for regulated facilities and entities. Further, ADEQ will have more resources to facilitate more expeditious permit review, both for new permits and renewals. This will allow permit applicants to begin facility operations sooner, mitigating administrative burdens associated with permit review time and allowing for faster business development, while still maintaining high regulatory standards for facilities and solid waste operations to ensure the protection of human health and the environment.

  Further, a fully-funded SWP will provide ADEQ with the resources needed to engage in greater oversight and compliance, ensuring a more level playing field between regulated businesses and

entities. With greater enforcement and oversight, ADEQ may better identify and address pollution, spills, and failures to meet regulatory requirements. This further promotes adherence to regulation amongst all facilities, mitigating the harm to those facilities and entities that must compete with and operate in the same regulatory space as those facilities and entities that may fail to adhere to minimum standards. Additionally, SWP may engage in more robust partnership with the regulated community through activities and programs designed to promote compliance and assistance. Increased program funding and stability can result in greater collaboration with the regulated community, including greater engagement by SWP sections in outreach that help facilities understand and comply with applicable regulations.

Probable costs to businesses directly affected by the rulemaking include the new or increased fees privately-owned solid waste facilities and entities will be subject to, as well as increased landfill tonnage and special waste tonnage fees.

There are approximately 27 active landfills and 7 landfills in post-closure care that are privately owned and operated subject to regulation by ADEQ.

Privately-owned regulated facilities and entities also include those described below:

- Transfer facilities subject to self-certification or best management practices. These facilities are located throughout the state and range in size and sophistication. Self-certification transfer facilities are those that handle a daily throughput of more than 180 cubic yards of solid waste, while transfer facilities subject to best management practices are those that handle a daily throughput of 180 cubic yards or less of solid waste. To note, mirroring public transfer facilities, exempted from the definition of transfer facilities for purposes of registration fees are material recovery facilities where the incoming materials are primarily source separated recyclables and community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, or governmental recyclable solid waste. There are approximately 80 privately-owned transfer facilities throughout the state.
- Used oil handlers. Used oil handlers are defined as used oil processors, burners, transporters, and marketers required to obtain an EPA identification number pursuant to 40 CFR 279. The majority of the used oil handlers are transporters and marketers, representing 85% of registered used oil handlers. Used oil transporters are anyone that collects or accepts used oil from regulated handlers and transports that used oil to another facility while used oil marketers are anyone who markets used oil or first claims that used oil meets the used oil fuel specifications. There are approximately 230 used oil handlers throughout the state.
- Biohazardous medical waste (BMW) facilities and entities. BMW facilities and entities include BMW transporters, BMW treatment facilities, and BMW storage facilities. There are approximately 50 BMW transporters engaged in moving biohazardous medical waste, as defined in R18-13-1401(4), to an approved disposal facility. There are approximately 20 BMW treatment and storage facilities accepting biohazardous medical waste for proper treatment, storage, and disposal pursuant to regulation.
- Septage haulers. There are over 500 registered privately owned and operated septage hauler licenses throughout the state engaged in the transportation of sewage or human waste that is removed from septic tanks or other onsite wastewater treatment facilities.

- Special waste facilities. Special waste facilities include generators, transporters, and receiving facilities of special waste, defined as solid waste other than hazardous waste requiring special handling and management. Currently petroleum contaminated soils and auto-shredder fluff from shredding motor vehicles are designated special wastes in Arizona. There are approximately 80 special waste transporters, 70 special waste generators, and 16 special waste receiving facilities throughout the state engaged in the transportation, treatment, storage and disposal of special waste.
- Collection or recycling facility that accepts lead-acid batteries. There are approximately 200 registered facilities with ADEQ authorized for the collection and recycling of lead-acid batteries throughout the state.

For the reasons discussed above, ADEQ finds that the benefits associated with this rule change outweigh any foreseen or anticipated costs.

General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking: ADEQ estimates this rulemaking will not have an impact on public or private employment.

Probable impact of the proposed rulemaking on small businesses: Arizona law defines "small business" for the purpose of this analysis as a "concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." *See* A.R.S. § 41-1001(23). The probable impact on small businesses includes an analysis of the following elements pursuant to A.R.S. § 41-1055(B)(5):

Identification of the small businesses subject to the rulemaking: ADEQ has reviewed its records of solid waste facilities subject to new or adjusted fees affected by this rule to determine which ones are small businesses. An important criterion is that the business must be independently owned and operated. Based on this review and applicable definition, it appears likely that many septage haulers are independently owned and operated and not likely to exceed the revenue and employee limits in the statutory definition of small business. Additionally, it appears likely that a number of used outdoor tire sites storing more than 100 used tires, biohazardous medical waste transporters, certain transfer facilities subject to best management practices, as well as certain used oil handlers would qualify as small businesses for purposes of this rulemaking and collection and recycling facilities accepting lead acid batteries.

Administrative and other costs required for compliance with the proposed rulemaking: ADEQ does not anticipate appreciable administrative or other costs associated with compliance with the rulemaking. While this rule imposes a financial obligation corresponding with registration of certain facility types, compliance with the requirements of registration has long been a component of SWP. Registration under this rulemaking is administrative, with no additional substantive licensing or approval procedures or requirements compared to those that may already exist for regulated facilities.

Reduction of Impact on Small Businesses: A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if any of the following methods are legal and feasible in meeting the statutory objectives which are the basis of the rule making:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.

2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.

4. Establish performance standards for small businesses to replace design or operational standards in the rule.

5. Exempt small businesses from any or all requirements of the rule.

The listed methods are not generally relevant to a rule establishing fees. *See* A.R.S. § 49-104(B)(17). However, in developing fee amounts for different categories of facilities and entities, ADEQ was guided by its statutory mandate that all fees be fairly assessed and impose the least burden and cost to the parties subject to the fees. Further, the implementation schedule discussed in greater detail in Part 7 of the Preamble was designed to impose the least burden possible on all facilities and entities subject to fees under this rule, including small businesses.

Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking: Adequate and sustainable funding for SWP further enables ADEQ to more fully perform its duties relating to its mission to enhance public health and the environment. Benefits to private persons and consumers includes greater enforcement and compliance activities that can be carried out by ADEQ. With adequate funding levels, SWP may conduct more regular inspections of regulated facilities and entities, leading to greater oversight, identification of violations, and corrective actions, resulting in greater minimization of public health risks from solid waste activities. Additionally, adequate funding for SWP will result in sustained and improved Agency response to citizen complaints. Robust engagement with the public is a critical component of ADEQ's mission. SWP receives approximately 80 solid waste complaints from the public annually. The ability to ensure that each complaint is efficiently and effectively fielded, managed, and resolved will be strengthened through adequate funding for SWP.

Further benefits include greater public outreach and education efforts. For example, the Recycling Program educates and encourages Arizonans to reduce, reuse, recycle, and buy recycled products as an alternative to solid waste disposal in landfills. The program assists communities and organizations in developing recycling programs, accessing markets for recycled materials, and educating people about the benefits of recycling. Providing information to the public regarding proper residential and commercial disposal of solid waste is another important component of ADEQ's mission.

Probable costs to private persons and consumers include the increase in the fee cap on the sale of new tires. This rulemaking incorporates into rule the statutory new tire sale fee under A.R.S. § 44-1302 of 2% on the purchase price of each tire sold and raises the per tire cap from $2.00 to $4.66. This is anticipated to result in increased revenues of $6.7 million. This fee is to be collected by the seller of tires and vehicles and often operates as a passthrough fee to be borne by the consumer. The maximum increased cost an individual consumer may be subject to is $10.64 per vehicle purchase or $2.66 per tire replacement, assuming the purchase is of a four-wheel vehicle.

An additional probable cost to private persons and consumers is the potential for increased solid waste disposal costs due to the increase to the landfill disposal fee. The landfill disposal tonnage fee is often a passthrough to residential customers. With the landfill disposal fee being increased based on a CPI adjustment, landfills, both public and privately-owned, may elect to raise rates for residents and customers to offset this increase.

Probable effect on state revenues: ADEQ estimates that fees from this rulemaking will directly affect state revenues by increasing overall annual fee revenue generated across programs and funds by approximately $12 million.

Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: This rulemaking is the least intrusive and costly means possible to achieve the same objectives. ADEQ engaged with stakeholders to explore methods to reduce the impact of new or increased fees, including among other outreach efforts three stakeholder meetings, and established an implementation schedule for the first calendar year of the fees to impose the least burden and cost, as discussed in detail in Part 7 of the Preamble.

Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data: Any data or reasoning which this rulemaking is based on is identified in the "Rule Scope and Explanation" portion of the Notice of Final Rulemaking located in Part 7. Generally, no new data was introduced or reviewed to make these rule changes.

Based on the foregoing, ADEQ finds that the benefits associated with this rule change outweigh any foreseen or anticipated costs.

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

Changes were made to the rule to reduce the regulatory burden and impact to stakeholders. These changes include:

1. Place a cap of 4% on the annual CPI adjustment for all fees. This involves inserting language stating "except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year" at: R18-13-402(E), R18-13-501(F), R18-13-702(G), R18-13-801(A), R18-13-1103(E), R18-13-1211(C), R18-13-1212(D), R18-13-1212.01(C), R18-13-1306(E), R18-13-1307(H), R18-13-1409(J), R18-13-1410(G), R18-13-1606(F), R18-13-1901(C), R18-13-2002(D), R18-13-2102(D), R18-13-2103(C), and R18-13-2202(D).
2. Set back the time of implementation of the adjustment from January to July of each year. This involves striking the word "January" and replacing with "July" at: R18-13-402(E), R18-13-501(F), R18-13-702(G), R18-13-801(A), R18-13-1103(E), R18-13-1211(C), R18-13-1212(D), R18-13-1212.01(C), R18-13-1306(E), R18-13-1307(H), R18-13-1409(J), R18-13-1410(G), R18-13-1606(F), R18-13-1901(C), R18-13-2002(D), R18-13-2102(D), R18-13-2103(C), and R18-13-2202(D).
3. Remove the annual CPI adjustment for the solid waste landfill disposal fee. This involves removing in whole subsection (H) of R18-13-2104.

4. Set back the implementation of the new tire sales fee until April 1, 2025. This involves inserting the language "Beginning April 1, 2025" at the beginning of R18-13-2202(A).

Additional non-substantive changes were made to improve clarity of the rule and better conform with official style and form guidance. These changes include:

5. R18-13-501(C). Reformat the numerical list to conform with current rule language.
6. R18-13-1103(C)(3). Replace the semicolon at the end of a list with a comma.
7. R18-13-1201. Reorder the new definition of "waste tire collection site" to now be in alphabetical order.
8. R18-13-1307(F). Reformat the subsection to conform with official Arizona rulemaking publishing style and form. This includes re-lettering current subsection (G) to subsection (F) and establishing subsection (F)(2) as new subsection (H).
9. R18-13-1409(I)(4). Correct the subsection reference from subsection (K) to subsection (I).
10. R18-13-1606(E). Correct the subsection reference from subsection (B) to subsection (C).
11. R18-13-2002(D). Correct the subsection references from subsection (B) and (C) to subsections (A) and (B).
12. R18-13-2104(C). Clarify the maximum fee amount is an annual maximum.
13. R18-13-2104(F). Delete redundant reference to "other information deemed necessary by the Department."
14. R18-13-2202(C). Add the word "Arizona" before "Department of Revenue" to improve clarity and consistency.
15. R18-13-2201(B). Insert the words "to a" before "political subdivision" to improve clarity.
16. R18-13-2202(A). Strike the words "sales tax" and replace with "transaction privilege tax" to more accurately use the applicable Arizona state tax terminology. Insert the word "tire" before the word "seller" to improve consistency.
17. R18-13-2202(D)(2). Add language stating ADEQ shall both notify the Arizona Department of Revenue of the annual CPI adjustment to the new tire sale fee and post such amount on its website as soon as practicable.

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

ADEQ received 15 comment letters throughout the formal comment period that ran from August 16, 2024 to September 20, 2024. Nine of these comment letters came from cities and towns, including the cities of Glendale, Goodyear, Mesa, Phoenix, Tempe, Tucson, Casa Grande, Scottsdale, and the Town of Gilbert, with the remaining comment letters coming from the League of Arizona Cities and Towns, Graham County, Gila County, the National Waste & Recycling Association's (NWRA-AZ) Arizona Chapter, the County Supervisors Association, and a member of the business community. ADEQ also received several formal oral comments during a public hearing held on September 19, 2024.

Throughout the comment letters and formal comments during the public hearing certain comments were consistently raised. Each of these comments is addressed and responded to below:

Impact of substantial fee increases. Comment letters state proposed fee increases are substantial. Commenters including the City of Phoenix and Graham County notes several fees are increased by 100%

or more, with three fees increased more than 1,000% compared to current levels. This impact will not only be felt by solid waste facilities such as landfills and transfer facility operators but also residents and local businesses that will experience direct and pass-through costs. The City of Phoenix notes this can present a challenge for cities and towns as service fee increases are politically sensitive, requiring advanced notification to residents and City Council approval.

Agency Response: ADEQ responds that SWP has been mandated to operating under a fee-based model since 2012. ADEQ recognizes that some fee increases are significant; however, for the last 12 years SWP has performed unfunded regulatory mandates for approximately half of its solid waste universe. Further, fees established in 2012 were established at levels far below actual cost to the Agency. Accordingly, this rulemaking establishes fees more universally throughout the solid waste universe with each fee established at a level reflective of actual costs to the Agency in carrying out relevant regulatory activities.

Fee implementation timing. Several comment letters note budget constraints faced by political subdivisions and the anticipated strain of having fee implementation coincide with the calendar year. Counties and municipalities have expressed that this situation creates challenges in budgeting and forecasting, particularly in preparing their budgets to accommodate fee payments and increases that become effective in January. Commenters request that fee implementation be delayed until July 1, 2025 and that future billing by the agency coincide with the fiscal year, with all future billing coming due pursuant to invoices sent in July.

Agency Response: ADEQ recognizes budget constraints faced by political subdivisions. Accordingly, ADEQ split the implementation of fees for calendar year 2025 between two invoice periods, as described in greater detail in Part 7 of the Preamble, "Implementation Schedule". Following the initial implementation, ADEQ has determined it is necessary for SWP to maintain the calendar year billing cycle to ensure continued program stability.

Continuing CPI Adjustments. Commenters raise concern that CPI adjustments under the rule are perpetual. Commenters note this may result in under or over cost recovery. Commenters request ADEQ make the following changes to the CPI adjustment methodology.

- ADEQ makes the CPI adjustments sunset after a period of five years.
- Each annual CPI adjustment is capped, such as at a maximum of a 5% increase per year.
- CPI adjustments should be implemented in July based on the CPI as published in January of each year.

Agency Response: ADEQ appreciates concerns raised by stakeholders concerning implementation of the CPI adjustment methodology, including the request for a sunset, cap to annual maximum adjustment, and aligning the adjustment with the fiscal year. ADEQ believes CPI is a reasonable tool to approximate year-to-year increased costs to the Agency. The annual CPI adjustment is representative of the cost of living for ADEQ employees, which ADEQ must hire and retain. CPI is a proven method for budgeting stability both in the public and private sectors. Within ADEQ, CPI has been utilized within the Air Quality Division for over a decade, and has been implemented in recent rulemakings for hazardous waste and water quality fees. Placing a cap on the maximum annual adjustment could result in a misalignment between program revenues and true costs to the program. ADEQ established fees at levels to cover program costs while imposing the least cost and burden to those subject to the fees. As CPI adjustments

are based on costs to the Agency, to cap these adjustments below changes to Agency costs would result in under-recovery by ADEQ.

ADEQ is committed to continued oversight and accountability for its programs. Program leadership analyzes the effectiveness of programs annually and reports to the Director on all aspects of the programs, including costs and revenues. Through this, ADEQ programs are regularly reviewed to ensure the Agency is able to meet its statutory mandates, including that all fees be fairly assessed and impose the least burden and cost. *See* A.R.S. § 49-104(B)(17). Accordingly, future adjustments to programs are considered to ensure continued alignment with those statutory mandates. As such, ADEQ does not believe a sunset on annual CPI adjustments is necessary.

However, while ADEQ determined that it is necessary for SWP to maintain the calendar year billing cycle to ensure continued program stability, to allow for adequate time to budget for annual adjustments based upon CPI, the rules have been changed so that adjustments will now align with the fiscal year. Further, to promote stability and predictability year-on-year, adjustments are capped at 4% of the fee amount of the preceding year.

Financial strain on political subdivisions due to legislative reduction of the flat tax and repeal of the rental tax. In comment letters political subdivisions consistently state the strain towns and cities are currently facing due to the recent implementation of the state reduced flat tax as well as the elimination of the rental tax. Towns and cities are concerned with the additional impact posed by fees under this rulemaking.

Agency Response: ADEQ recognizes that political subdivisions including cities and towns face certain economic constraints from recent legislative changes. In accordance with ADEQ's mandate for a fee-based program and pursuant to A.R.S. § 49-104(B)(17), ADEQ established fees to be "fairly assessed and impose the least burden and cost to the parties subject to the fees" based upon an evaluation of "the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses."

In response to current and projected economic constraints felt by cities and towns and the residents who ultimately pay for solid waste services, these rules have been changed to eliminate the annual CPI adjustment for the solid waste landfill disposal fee. This will allow for political subdivisions that operate landfills to better project anticipated costs.

Assurance that the fees will support the solid waste fund and recycling grants and not be swept to cover other state budget shortfalls. Commenters raise concern that revenues to the Recycling Fund from landfill disposal fees will be used to support other state budget needs.

Agency Response: ADEQ appreciates these concerns. ADEQ is committed to using the greatest portion feasible of the Recycling Fund towards grants and contracts and other stated uses under A.R.S. § 49-837 to further the mission of the Arizona Recycling Program. Appropriation authority rests solely with the state legislature.

Additional comments specific to each commenter are addressed below:

City of Glendale. The City of Glendale states the City has Intergovernmental Agreements (IGAs) with the cities of Peoria, Goodyear, and Avondale for use of its landfill. These IGAs do not reflect the increase in fees and this cost will be absorbed by the City of Glendale. The City of Glendale requests the rulemaking be paused and ADEQ adjust its approach to reduce the impact on cities.

Agency Response: ADEQ responds that, as demonstrated through a series of stakeholder meetings and presented materials, to carry out the Agency's legislative mandates, the Agency has borne costs far exceeding revenues due to inflation and from insufficient fees under a fee-for-service program since 2012. These fee increases are necessary to ensure program stability for the Agency to fulfill its statutory mandates to protect human health and the environment.

The Legislature passed HB2367 pursuant to an emergency clause for immediate enactment. Delaying the rulemaking and final implementation of the fees would jeopardize the financial stability of SWP.

National Waste & Recycling Association's – Arizona Chapter. The NWRA-AZ comment letter includes the following: (1) requests ADEQ update an Agency calendar reflecting the adoption of the new rule, (2) formalize rules for the Recycling Grant Program, (3) asks if there exists a proforma report projecting total revenues in this program and as a result of these increases and how they relate to program costs ensuring that the program is not over funded, (4) questions the application of fees, if any, to closed landfills to ensure that post-closure plans are accurate and if none are applied, written statement in the Rules regarding absence of fee assessment to closed landfills and (5) NWRA-AZ requests feedback on if submitted comments are available for review and if they will be available through the ADEQ website.

Agency Response: ADEQ responds to the request for an Agency calendar by stating ADEQ intends to update the regulated community annually following implementation of the fees and for subsequent CPI adjustments. In the third stakeholder meeting held July 18, 2024, ADEQ explained how the Agency plans to publish on the ADEQ website the fee table and fee updates for all fees affected by the rulemaking. Further, ADEQ intends to send out notice to regulated facilities subject to the fees announcing fee adjustment and updates. This is based upon current practice for hazardous waste fees that are similarly subject to annual CPI adjustments.

The Agency recognizes and appreciates the importance of recycling grant funding and the Recycling Grant Program for stakeholders and the public. However, it is outside the authority or mandate of this rulemaking for ADEQ to implement any rules for the Recycling Program.

Post-closure plans are reviewed as part of the approval process. Further, ADEQ has responsibility for regulatory oversight of landfills for the full duration of post-closure care. This oversight includes inspections, data review, and records management. The annual fee for post-closure care will cover costs to the Agency for this regulatory oversight.

Concerning the question if submitted comments are available for review, ADEQ responds that the agency acts in accordance with its statutory mandate to summarize comments and publish responses in this Notice of Final Rulemaking. Public comments are available through the ADEQ Records Management Center via a public records request under A.R.S. §§ 39-101 through 39-161.

City of Phoenix. The City of Phoenix requests additional clarification on proposed fee increases. City of

Phoenix notes in the Notice of Proposed Rulemaking (NPRM) that ADEQ states "currently regulatory costs across all solid waste programs for ADEQ are estimated to total $3.5M per year; however, current fees generated are estimated at roughly $500,000." The City of Phoenix requests clarity on how much of the current generated fee revenue is in the recycling fund versus the solid waste fund and please provide the estimated revenue by fund with the proposed fee increases and how the total contribution of the fee on the sale of new tires into the solid waste fee fund of $665,000 was derived. The City of Phoenix also believes that the NPRM statement the post-closure care fee is new is inconsistent with the strike-through language in R18-13-2103 on page 2598 that states the annual landfill registration is $1,250. The City of Phoenix requests clarity if the closed landfill fees are new or increases on existing fees.

The City of Phoenix recommends ADEQ limit the subsequent CPI increases and provide ongoing and thorough transparency and justification for the fee increases.

Agency Response: ADEQ clarifies that the stated approximately $500,000 of fee revenue deposited into the Solid Waste Fees Fund comes from annual registration fees for facilities and entities. As noted by the commenter, all revenues generated from the landfill disposal fee are deposited into the Recycling Fund pursuant to A.R.S. 49-836.

Following this rulemaking, revenues to the Solid Waste Fee Fund, which include annual registration fees, special waste tonnage fees, and the 3.5% apportioned from the new tire sale fee, are estimated to be approximately $3.4 million (an increase of $2.1 million) depending on total tonnage disposed of, active amount of facility registrations, and the sale amount of new tires; revenues to the Recycling Fund, which include the landfill tonnage disposal fee, are estimated to be approximately $6.2 million (an increase of $3.5 million), with future expenditure levels contingent on legislative appropriation; and revenues generated from the new tire sales fee, contingent on the number of tires sold, are estimated to be approximately $19 million (an increase of $6.7 million). The determination of total contribution of the new tire sales fee estimated at approximately $665,000 is based upon 3.5% of the total approximate revenue from the new tire sales fee.

ADEQ clarifies that the current annual registration fee of $1,250 is only applicable through completion of landfill closure. However, it does not apply to landfills still regulated in post-closure care. This has been the historic application of this fee provision based upon interpretation of prior statutory authority. Subsequent clarity to this statutory authority through amendment to the definition of a "closed solid waste facility" made during the 2024 legislative session pursuant to HB2628 provided the directive for the collection of the fee during the full period of post-closure care as established in the rule. The Amendment to R18-13-2103 establishes that this fee, increased to $3,500, is for the full duration of post-closure care, approximately 30 years, for the reasons stated in the Preamble. As this fee will now be applicable for a different duration of time and obligations, ADEQ characterizes this as a new fee.

Concerning City of Phoenix's request to limit the subsequent CPI increases and provide ongoing and thorough transparency and justification for the fee increases, ADEQ believes CPI is a reasonable tool to approximate year-to-year increased costs to the Agency. The annual CPI adjustment is representative of the cost of living for ADEQ employees, which ADEQ must hire and retain. CPI is a proven method for budgeting stability both in the public and private sectors. At ADEQ, CPI has been utilized within the Air Quality Division for over a decade, and has been implemented in recent rulemakings for hazardous waste and water quality fees. Further, ADEQ is committed to continual program oversight and accountability.

Program leadership analyzes the effectiveness of programs annually and reports to the Director on program revenues and costs as necessary to meet ADEQ's statutory mandates.

While ADEQ recognizes CPI as a reasonable tool to approximate year-to-year increased costs to the Agency, ADEQ acknowledges concerns raised by the regulated community. As such, to promote stability and predictability year-on-year, the rules have been changed so that all CPI adjustments are capped at 4% of the fee amount of the preceding year.

City of Tucson. The City of Tucson recommends that ADEQ consider the implementation of these proposed fees in phases pursuant to an implementation schedule over a period of three-to-five years.

Agency Response: ADEQ responds that SWP has been experiencing budget shortfalls for years that continues to be compounded by growing costs without corresponding revenue increases. It is due to the urgency with which SWP needs increased fee revenues to ensure proper cost-recovery and a self-funded program that the Legislature passed HB2367 pursuant to an emergency clause for immediate enactment. Delaying implementation of the fees pursuant to a delayed implementation schedule over the course of several years would jeopardize the financial stability of SWP.

County Supervisors Association of Arizona. The County Supervisors Association expresses support received from counties for the adjustment by CPI for the cap on the new tire sales fee from $2.00 to $4.66 as proposed in the rule that will further fund county obligations to collect and contract for the disposal of waste tires.

The Association expresses concern increased costs may incentivize illegal dumping. The Association requests that notice of fee increases be sufficient to allow stakeholders to address costs in future budgets, that fee increases align with existing budget timelines, and that proposed fee increases are justified with annual cost estimates by ADEQ.

Agency Response: ADEQ recognizes that illegal dumping is an ongoing challenge throughout the state. However, ADEQ finds that increased fee revenues ensuring overall program health and self-sufficiency for SWP will strengthen the capacity for ADEQ to partner with counties and other political subdivisions to address key waste issues, such as wildcat, or illegal, dumping of waste.

In response to the Association's request that notice of fee increases be sufficient, ADEQ intends to update the regulated community annually following implementation of the fees and for subsequent CPI adjustments. As stated above, the Agency plans to publish on the ADEQ website the fee table and fee updates for all fees affected by the rulemaking. Further, ADEQ intends to send out notice to regulated facilities subject to the fees announcing any fee adjustment and updates. This is based upon current practice for hazardous waste fees that are similarly subject to annual CPI adjustments.

ADEQ selected CPI as the adjustment methodology because ADEQ believes CPI is a reasonable tool to approximate year-to-year increased costs to the Agency. The annual CPI adjustment is representative of the cost of living for ADEQ employees, which ADEQ must hire and retain. CPI is a proven method for budgeting stability both in the public and private sectors. At ADEQ, CPI has been utilized within the Air Quality Division for over a decade, and has been implemented in recent rulemakings for hazardous waste and water quality fees. Program leadership analyzes the effectiveness of programs annually and reports to

the Director on program revenues and costs as necessary to meet ADEQ's statutory mandates.

ADEQ recognizes budget constraints faced by stakeholders. Accordingly, ADEQ split the implementation of fees for calendar year 2025 between two invoice periods, as described in greater detail in Part 7 of the Preamble, "Implementation Schedule". After continued review, following the initial implementation, ADEQ determined it is necessary for SWP to maintain the calendar year billing cycle to ensure continued program stability.

However, to ensure adequate time to budget for annual adjustments based upon CPI, these adjustments will now align with the fiscal year. Further, to promote stability and predictability year-on-year, the rules have been changed so that all CPI adjustments are capped at 4% of the fee amount of the preceding year.

Graham County. Graham County characterizes and raises concern with the new and adjusted fees pursuant to this rulemaking as an "across the board" method based not on the cost to ADEQ of each activity but on the need to raise operational revenue. Graham County states that the emergency legislation of HB2367 enacts fees on July 1. The timing imposes fees that Graham County and other government agencies haven't budgeted for.

Graham County states the landfill disposal fee increase is substantial and rural counties will be unable to cope with the increase. Further, the landfill disposal fee and septage hauler annual registration fee increase will be borne by customers, presenting a challenge for rural counties and municipalities struggling with "wildcat dumping" to avoid landfill costs. Graham County requests fees be increased incrementally over a period of years rather than immediately to lessen "sticker shock" felt by permittees and customers.

Agency Response: ADEQ asserts that each fee was established pursuant to the statutory mandate requiring each fee be based upon an evaluation of "the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses." *See* A.R.S. § 49-104(B)(17). Fees were established under this rulemaking to ensure a fully self-funded program. To ensure ADEQ fulfilled this statutory mandate, the Agency reviewed actual costs in conducting inspections and regulatory oversight for each class of facility and established fee amounts to ensure fees are reflective of those costs relating to the Department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel, and other necessary operational expenses associated with the type of activity or facility that is assessed a fee. ADEQ states, as demonstrated through a series of stakeholder meetings and presented materials, to maintain the Agency's legislative mandates the Agency has borne costs far exceeding revenues due to inflation and from insufficient fees under a fee-for-service program since 2012. These fee increases are necessary to ensure program stability for the Agency to fulfill its statutory mandates to protect human health and the environment.

ADEQ recognizes based on stakeholder feedback that fee increases pose budget difficulties and that certain fees, such as the landfill disposal fee and septage hauler annual registration fee, are costs that may be passed on to customers. Accordingly, ADEQ split the implementation of fees for calendar year 2025 between two invoice periods, as described in greater detail in Part 7 of the Preamble, "Implementation Schedule".

ADEQ finds that increased fee revenues ensuring overall program health and self-sufficiency for SWP

will strengthen the capacity for ADEQ to partner with counties and other political subdivisions to address key waste issues, such as wildcat, or illegal, dumping of waste. ADEQ recognizes the county's concern with "sticker shock" associated with these fee increases. ADEQ responds as stated above to comments from the City of Tucson that SWP has been experiencing budget shortfalls for years that continues to be compounded by growing costs without corresponding revenue increases. It is due to the urgency with which SWP needs increased fee revenues to ensure proper cost-recovery and a self-funded program that the Legislature passed HB2367 pursuant to an emergency clause for immediate enactment. Delaying implementation of the fees pursuant to a delayed implementation schedule over the course of several years would jeopardize the financial stability of SWP.

City of Scottsdale. The City of Scottsdale requests the tonnage disposal fee not be swept to cover other state budget shortfalls. The City of Scottsdale expresses opposition to perpetual CPI adjustments and instead recommends more frequent rulemakings to adjust fees. Additionally, and in the alternative, the City of Scottsdale requests continuing CPI adjustments be made in July instead of January to coincide with the fiscal year. The City of Scottsdale further raises a series of questions:

- Did the Solid Waste Management program FY 24/25 budget include revenue from the January 1 rate increase? And if yes, what is the total amount of forecasted revenue?
- To achieve the goal of a fully self-funded program, why did ADEQ choose the method of annual CPI adjustments to recover costs instead of reviewing previous fiscal year costs then seeking a corresponding rate increase?
- What will happen if costs are either over recovered or under recovered through annual CPI adjustments?

Agency Response: ADEQ responds that while the rule will be effective in January 2025, the increased portions of the fees would not take effect until July 2025 pursuant to the implementation schedule and thus would not affect the FY2025 budget. ADEQ selected CPI as the methodology because CPI is a proven method for budgeting stability both in the public and private sectors. Within ADEQ, CPI has been utilized within the Air Quality Division for over a decade, and has been implemented in recent rulemakings for hazardous waste and water quality fees. ADEQ is committed to continual program oversight and accountability. Program leadership analyzes the effectiveness of programs annually and reports to the Director on program revenues and costs as necessary to meet ADEQ's statutory mandates.

Further, to ensure adequate time to budget for annual adjustments based upon CPI, the rules have been changed so that adjustments will now align with the fiscal year. Additionally, to promote stability and predictability year-on-year, CPI adjustments are capped at 4% of the fee amount of the preceding year.

Agency rulemakings represent a great cost in time and resources to the agency. The cost to ADEQ to undertake annual rulemaking would require the allocation of resources in personnel and time that would hinder the agency's ability to fulfill its mission and statutory mandates.

Town of Gilbert. The Solid Waste Collections Superintendent representing the Town of Gilbert asked during the public hearing if the formal comment period may be extended.

Agency Response: ADEQ is committed to engagement with stakeholder and the public throughout the rulemaking process. However, it is critical that this rule be effective by January 2025 to ensure program

stability. The program is currently experiencing budget shortfalls. Any delay to the implementation of fees will further impact the ability for SWP to fulfill its statutory mandates. An extension of the public comment period is not possible as it would result in a delay of submission of the final rule to the Governor's Regulatory Review Council, resulting in an effective date of the rule after January 2025.

Gila County, District 3 Supervisor Woody Cline. Supervisor Cline objects to the proposed fees, stating the fees will place a financial burden on the county's landfills and that financial burden will be passed on to the county's constituents. Supervise Cline states the county has worked diligently to combat blight on public lands and this increase in fees will definitely have a negative effect on the progress made.

Agency Response: ADEQ responds that, as demonstrated through a series of stakeholder meetings and presented materials, to maintain the Agency's legislative mandates the Agency has borne costs far exceeding revenues due to inflation and from insufficient fees under a fee-for-service program since 2012. These fee increases are necessary to ensure program stability for the Agency to fulfill its statutory mandates to protect human health and the environment.

Tank's Green Stuff. The CEO of Tank's Green Stuff protests the increase in fees for composting operations and construction waste landfills citing soaring operating costs, including equipment, labor, energy costs, and breaks in the supply chain. Tank's Green Stuff states fees should instead be reduced to assist businesses in recovering from recent economic hardships.

Agency Response: ADEQ responds that, as demonstrated through a series of stakeholder meetings and presented materials, to maintain the Agency's legislative mandates the Agency has borne costs far exceeding revenues due to inflation and from insufficient fees under a fee-for-service program since 2012. These fee increases are necessary to ensure program stability for the Agency to fulfill its statutory mandates to protect human health and the environment. ADEQ further states that registration fees for composting facilities have been removed from the rulemaking following discussion and feedback from stakeholders to ensure composting may be more prudently addressed in a future rulemaking.

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:

Not applicable.

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:

Not applicable. These rules establish registration requirements solely for revenue purposes. *See* A.R.S. § 41-1001(13).

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 on the competitiveness of business in this state to the impact on business in other states:

No such analysis was submitted.

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.

16. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY

SOLID WASTE MANAGEMENT

ARTICLE 4. SOLID WASTE FACILITIES SUBJECT TO BEST MANAGEMENT PRACTICES

Section

R18-13-401. Definitions

R18-13-402. Solid Waste Facilities Subject to Best Management Practices; Fees

ARTICLE 5. REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION

Section

R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

Section

R18-13-702. Solid Waste Facility Plan Review Fees

Fee Tables Fees for Plan Review of New Solid Waste Facilities

Fees for Modifications to Solid Waste Facility Plans

Fees for Review of Financial Responsibility Plans for Solid Waste Facilities

ARTICLE 8. GENERAL PERMITS

Section

R18-13-801. General Permit Fees

Table Solid Waste General Permits

ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA

Section

R18-13-1103. General Requirements; License Fees

R18-13-1117. Reinstatement

ARTICLE 12. WASTE TIRES; USED TIRES

Section

R18-13-1201. Definitions

R18-13-1211. Registration of New Waste Tire Collection Sites; Fee

R18-13-1212. Registration of Outdoor Used Tire Sites; Fee

R18-13-1212.01. Waste Tire Collection Site Subject to Plan Approval; Fees

R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee

ARTICLE 13. SPECIAL WASTE AND BEST MANAGEMENT PRACTICES FOR SHREDDER RESIDUE

Section

R18-13-1306. ~~Reserved~~ Fees

R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles; Fees

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS

Section

R18-13-1409. Transporter License; Fees; Transportation

Table 1 ~~Fee Table – Transporter License Fees;~~ Frequency of Application for Transporter License

Table 2 Fee Table – Transporter Annual Fee

R18-13-1410. Storage, Transfer, Treatment, and Disposal Facilities; Facility Plan Approval; Fees

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

Section

R18-13-1606. Fees

ARTICLE 19. LEAD ACID BATTERY RECYCLING

Section

R18-13-1901. Collection or Recycling Facility of Lead Acid Batteries; Registration; Fees

ARTICLE 20. USED OIL

Section

R18-13-2001. Definitions

R18-13-2002. Used Oil Handler Registration; Fee

R18-13-2003. Used Oil Collection Center Identification Number; Requirements

ARTICLE 21. SOLID WASTE LANDFILL REGISTRATION AND DISPOSAL FEES

Section

R18-13-2101. Definitions

R18-13-2102. Registration; Annual Registration Fee ~~for an Existing Solid Waste Landfill~~

R18-13-2103. ~~Annual Landfill Registration: Due Date and Fees~~ Landfill Closure and Post-Closure Care Obligations; Fees

R18-13-2104. Solid Waste Landfill Disposal Fee; Exemptions

ARTICLE 22. NEW TIRE SELLERS

Section

R18-13-2201. Definitions

R18-13-2202. New Tire Sellers; Fee

ARTICLE 4. SOLID WASTE FACILITIES SUBJECT TO BEST MANAGEMENT PRACTICES

R18-13-401. Definitions

A. "Department" means the Arizona Department of Environmental Quality.

B. "Material recovery facility" means a transfer facility that collects, compacts, repackages, sorts, or processes commingled recyclable solid waste generated offsite for the purpose of recycling and transport, or where source separated recyclable solid waste is processed for sale to various markets, and where the incoming materials are predominantly recyclable solid waste.

C. "Recyclable solid waste" means a product or material described in subsection (C)(1) or (2), and for which subsection (C)(3) is true:

1. A product with no useful life remaining for the purposes for which it was produced, or if useful life remains, the product will not, due to location, quantity, or owner choice, remain in use or be reused for a purpose for which it was produced.
2. A material that is a result of a process or activity whose purpose was to produce something else.
3. The product or material retains some economic value, with or without further processing, as a raw material or feedstock in some process other than incineration or combustion.

R18-13-402. Solid Waste Facilities Subject to Best Management Practices; Fees

A. The following solid waste facilities subject to best management practices under A.R.S. § 49-762.02 shall register with the Department and pay registration fees as provided in this Section:

1. A transfer facility, as defined in A.R.S. § 49-701, with a daily throughput of 180 cubic yards or less, but not including:
   a. A material recovery facility where the incoming materials are primarily source separated recyclables; or
   b. Community or neighborhood recycling bins including drop boxes, roll off containers, and plastic containers used to collect residential, business, or governmental recyclable solid waste.
2. A site at which more than 500 and fewer than 5,000 waste tires are stored on any day that is not required to obtain plan approval pursuant to A.R.S. § 49-762.

B. Initial registration. A new solid waste facility listed in subsection (A) shall not begin operation until the owner or operator registers with the Department on a form approved by the Department. The owner or operator of a new solid waste facility listed in subsection (A) shall submit an initial registration fee of $1,800 at the time of registration under this subsection.

C. Annual registration fee. The Department shall bill an annual registration fee of $1,500 to a registered solid waste facility listed in subsection (A) that has not filed a notice of termination of registration with

the Department. The owner or operator of a registered solid waste facility listed in subsection (A) shall pay the annual registration fee within 30 days of invoice receipt.

D. Registration as a waste tire collection site under R18-13-1211 shall satisfy registration and fee requirements pursuant to this Section for a site under subsection (A)(2) of this Section.

E. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (B) and (C) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (E)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

ARTICLE 5. REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION

R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees

A. The following solid waste facilities requiring self-certification under A.R.S. § 49-762.01 shall register with the Department and pay annual registration fees as provided in this Section ~~by September 30, 2012, and annually thereafter by September 30th~~:

1. A transfer facility, as defined in A.R.S. § 49-701, with a daily throughput of more than 180 cubic yards, including a material recovery facility, but not including:
   a. A material recovery facility where the incoming materials are primarily source separated recyclables; or
   b. Community or neighborhood recycling bins including drop boxes, roll off containers, and plastic containers used to collect residential, business, ~~and/~~or governmental recyclable solid waste.
2. A facility storing 5,000 or more waste tires on any one day and not required to obtain plan approval.
3. A waste tire shredding and processing facility.

B. Initial registration for a new facility. The owner or operator of a planned new facility identified in subsection (A) of this Section shall submit the following information to the Department before beginning construction:

1. The name of the solid waste facility.

2. The name, mailing address and telephone number of each owner and operator of the solid waste facility.
3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
5. A diagram of the property showing its approximate size and the planned location of the solid waste facility or facilities.
6. Documentation that the facility will comply with local zoning laws or, if the owner is an agency or political subdivision of this state, with A.R.S. § 49-767.
7. Documentation that the facility has any other environmental permit that is required by statute.
8. A copy of the public notice in a newspaper of general circulation in the area where the facility will be located stating the intent to construct and operate a new solid waste facility pursuant to A.R.S. § 49-762.05.

C. Initial and annual registration for an existing facility. The owner or operator of an existing facility <u>identified in subsection (A) of this Section</u> shall submit the following information to the Department annually on a form approved by the Department and note any changes since the last registration:

1. The name of the solid waste facility.
2. The name, address and telephone number of each owner and operator of the solid waste facility.
3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
5. A diagram of the property showing its approximate size and the location of the solid waste facility or facilities.
6. Documentation that the facility remains in compliance with the most current local zoning laws or with A.R.S. § 49-767, as applicable.
8. Documentation that the facility continues to hold any other environmental permit that is required by statute.

D. Self-certification. With each registration under subsection (B) or (C) of this Section, the owner or operator shall certify that the information submitted is true, accurate, and complete to the best of the person's knowledge and belief.

E. Registration fees. The owner or operator of a ~~transfer~~ solid waste facility under subsection (A)~~(1)~~ shall pay the Department ~~$1,000~~ $3,600 for the initial registration of a new ~~or existing~~ facility, and ~~$500~~ $3,000 for each annual registration thereafter. The Department shall bill the annual registration fee to a solid waste facility under subsection (A) that has not filed a notice of termination of registration with the Department and the solid waste facility shall pay within 30 days of invoice receipt. ~~The owner or operator of a tire facility under subsection (A)(2) or (3) shall pay the Department $1,000 for the initial registration of a new or existing facility, and $250 for each annual registration thereafter.~~

F. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (E) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (F)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

~~**F.**~~ **G.** As used in this Section:

1. "Department" means the Arizona Department of Environmental Quality.
2. "Material recovery facility" means a transfer facility that collects, compacts, repackages, sorts, or processes commingled recyclable solid waste generated offsite for the purpose of recycling and transport, or where source separated recyclable solid waste is processed for sale to various markets, and where the incoming materials are predominantly recyclable solid waste.
3. "Recyclable solid waste" means a product or material described in subsection ~~(F)~~(G)(3)(a) or (b), and for which subsection ~~(F)~~(G)(3)(c) is true:
   a. A product with no useful life remaining for the purposes for which it was produced, or if useful life remains, the product will not, due to location, quantity, or owner choice, remain in use or be reused for a purpose for which it was produced.
   b. A material that is a result of a process or activity whose purpose was to produce something else.
   c. The product or material retains some economic value, with or without further processing, as a raw material or feedstock in some process other than incineration or combustion.

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

R18-13-702. Solid Waste Facility Plan Review Fees

A. With each application submitted for approval pursuant to A.R.S. § 49-762.03, the applicant shall remit an initial fee in accordance with one of the fee tables in this subsection, unless otherwise provided in subsection (B) of this Section. This subsection also lists the maximum fees that the Department will bill the applicant. All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

Fee Tables

Fees for Plan Review of New Solid Waste Facilities		
	Initial	Maximum
Solid Waste Landfills	$20,000	~~$200,000~~ $297,047
Non-APP requirements for Non-MSWLFs operating under an APP	$2,000	~~$50,000~~ $74,262
Other Solid Waste Facilities Subject to Plan Approval	$10,000	~~$100,000~~ $148,524

Fees for Modifications to Solid Waste Facility Plans		
	Initial	Maximum
Solid Waste Landfills – Type IV	$1,500	~~$150,000~~ $222,786
~~Solid Waste Landfills – Type IV – RD&D~~	~~$15,000~~	~~$150,000~~
Solid Waste Landfills – Type III	$750	~~$75,000~~ $111,393
Other Solid Waste Facilities Subject to Plan Approval - Type IV	$750	~~$75,000~~ $111,393

Other Solid Waste Facilities Subject to Plan Approval - Type III	$500	~~$50,000~~ $74,262

Fees for Review of Financial Responsibility Plans for Solid Waste Facilities		
	Initial	Maximum
Annual Review for Solid Waste Landfills	~~$600~~ $891 Flat Fee	N/A
Other Solid Waste Facilities	$200	~~$5,000~~ $7,426

B. No change

1. No change
2. No change
   a. No change
   b. No change
   c. No change
3. No change
4. No change

C. No change

D. No change

E. No change

F. The hourly rate is ~~$122.00~~ $181~~, beginning July 1, 2012, and shall remain in effect until it is either changed or repealed~~.

G. Beginning July 1, 2026, the Director shall adjust the fee amounts in the columns of the Fee Tables titled "Maximum", the annual review for solid waste landfills flat fee in the Fee Table - Fees for Review of Financial Responsibility Plans for Solid Waste Facilities, and the hourly rate amount in subsection (F) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.

2. Round the result from subsection (G)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

ARTICLE 8. GENERAL PERMITS

R18-13-801. General Permit Fees

A. The Department shall assess annual fees for operation under a general permit established in rule as described in the Table below. Beginning July 1, 2026, the Director shall adjust the fee amounts in the Table below annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (A)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

B. No change

C. No change

D. No change

Solid Waste General Permits

Category	Initial Fee	Annual Fee
Collection, Storage and Transfer-Standard	~~$750~~ $1,114	~~$100~~ $149
Collection, Storage and Transfer-Complex	~~$7,500~~ $11,139	~~$1,000~~ $1,485
Treatment-Standard	~~$1,000~~ $1,485	~~$100~~ $149
Treatment-Complex	~~$10,000~~ $14,852	~~$1,000~~ $1,485
Disposal	~~$15,000~~ $22,279	N/A

ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA

R18-13-1103. General Requirements; License Fees

A. Any person owning or operating a vehicle or appurtenant equipment used to store, collect, transport, or dispose of sewage or human excreta that is removed from a septic tank or other onsite wastewater treatment facility; earth pit privy, pail or can type privy, or other type of privy; sewage vault; or fixed or transportable chemical toilet shall obtain a license for each vehicle from the Department. The person shall apply~~, in writing,~~ on a ~~forms~~ form ~~furnished~~ approved by the Department and shall demonstrate that each vehicle is designed and constructed to meet the requirements of this Article.

B. No change

C. License terms.

1. For each ~~vehicle~~ newly licensed vehicle:

   a. subject to inspection conducted by the Department pursuant to this Article ~~after June 30, 2012~~, the initial license fee shall be ~~$250~~ $660, ~~and shall~~ to be submitted with the license application, and the annual license fee shall be $550; or

   b. subject to inspection conducted by a county pursuant to a delegation agreement with the Department, the initial license fee shall be $270, to be submitted with the license application, and the annual license fee shall be $225.

2. After initial licensure of a vehicle, the Department will renew the license annually after payment of ~~a $75~~ the annual fee according to subsection (C)(3). The licensee shall ~~submit~~ renew by completing a ~~the Department approved~~ renewal form approved by the Department and submitting the annual license fee to the Department no later than 30 days before expiration.

~~2. For those vehicles licensed before July 1, 2012, the initial license fee shall be $75 and shall be paid within 30 days of receipt of an invoice from the Department. The license shall be valid for one year. The licensee shall submit the Department approved renewal form and the annual license fee of $75 to the Department no later than 30 days before expiration.~~

3. Each vehicle license may be renewed if:

   a. The annual license fee is paid,

   b. The owner or operator is in compliance with subsection (D) of this Section,

   c. The vehicle is operated by the same person for the same purpose, ~~and~~

   d. The vehicle has been inspected within the last 12 months pursuant to any inspection required under this Article and found in compliance with this Article, and

   ~~d.~~ e. The vehicle is maintained according to this Article.

D. No change

E. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (C) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (E)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

R18-13-1117. Reinstatement

A. Upon request of the vehicle owner, the Department may reinstate a suspended or revoked vehicle license following a Department reinspection and based on an evaluation of compliance with the requirements of this Article.

B. Upon request of a vehicle owner that fails to complete a renewal form approved by the Department and submit the annual license fee to the Department no later than 30 days before expiration, the Department may reinstate an expired vehicle license after completion of a renewal form, submitting the appropriate annual license fee, and following a Department determination of compliance with the requirements of this Article.

ARTICLE 12. WASTE TIRES; USED TIRES

R18-13-1201. Definitions

In addition to the definitions provided in A.R.S. § 44-1301, the following definitions apply in this Article:

1. "Aquifer protection permit" means an authorization issued by the Department under A.R.S. § 49-241 et seq.
2. "Burial cell" means an area where mining waste tires are placed in or on the land for burial.
3. "Mining" means activities dedicated to the exploration, extraction, beneficiation, and processing, including smelting and refining, of metallic ores.
4. "Mining facility" means any land, building, installation, structure, equipment, device, conveyance, or area dedicated to mining.
5. "Mining waste tire" means an off-road tire that is greater than three feet in outside diameter that was used in mining.
6. "Operator" means an owner, part owner, management agency, or lessee of a mining facility, a person responsible for the overall operation or control of a mining facility, or an authorized representative of the operator.
7. "Person" is defined in A.R.S. § 49-201.
8. "Waste tire collection site" is defined in A.R.S. § 44-1301.

9. "Waste tire cover" means waste tires that are chopped or shredded into pieces that do not exceed four inches in diameter used for cover at a solid waste landfill.

R18-13-1211. Registration of New Waste Tire Collection Sites; Fee

A. A new waste tire collection site shall not begin operation ~~after July 20, 2011,~~ until the owner or operator registers with the Department. The owner or operator shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable. The owner or operator of a new waste tire collection site ~~that begins operation after July 20, 2011,~~ shall pay an initial registration fee of ~~$500~~ $2,400 within 30 days of invoice receipt. ~~For purposes of this Section, "new waste tire collection site" means a waste tire collection site as defined in A.R.S. § 44-1301 that did not operate as a collection site on or before July 20, 2011.~~

B. The owner or operator shall pay a ~~$75~~ $2,000 registration fee annually thereafter within 30 days of invoice receipt.

C. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (A) and (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (C)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

R18-13-1212. Registration of Outdoor Used Tire Sites; Fee

A. A person shall not store 100 or more used tires outdoors until the person registers with the Department. A person that stores 100 or more used tires outdoors ~~after July 20, 2011,~~ shall pay an initial registration fee of ~~$500~~ $1,800 within 30 days of invoice receipt. The person shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable.

B. A ~~$75~~ $1,500 registration fee shall be paid annually thereafter within 30 days of invoice receipt.

C. For the purposes of this Section:

1. "Used tire" means any tire which has been used for more than one day on a motor vehicle.
2. "Outdoors" means other than inside a building with a weatherproof roof.

D. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (A) and (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (D)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

R18-13-1212.01 Waste Tire Collection Site Subject to Plan Approval; Fees

A. Initial registration. A waste tire collection site that is required to obtain plan approval under A.R.S. § 49-762(A)(7) shall not begin operation until the owner or operator registers with the Department on a form approved by the Department.

B. Annual registration fee. The Department shall bill an annual registration fee of $5,000 to a registered waste tire collection site that is required to obtain plan approval under A.R.S. § 49-762(A)(7) that has not filed a notice of termination of registration with the Department. The owner or operator of the waste tire collection site that is required to obtain plan approval under A.R.S. § 49-762(A)(7) shall pay the annual registration fee within 30 days of invoice receipt.

C. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (C)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee

A person who is required to register a tire facility under more than one of the Sections listed in subsections (1) through ~~(3)~~ (4) shall register and follow procedures under each Section, but is only required to pay the registration fees under the Section with the highest fees.

1. R18-13-1211.
2. R18-13-1212.

3. R18-13-1212.01.

~~3.~~ 4. R18-13-501.

ARTICLE 13. SPECIAL WASTE AND BEST MANAGEMENT PRACTICES FOR SHREDDER RESIDUE

R18-13-1306. ~~Reserved~~ Fees

A. Initial registration fee. Upon making a request for a special waste identification number on a form as provided by the Director, and shown as Appendix A to this Article, an applicant shall submit to the Department an initial registration fee for each operation as follows:

1. For a generator of shredder residue, $3,600; and
2. For a special waste shipper, $1,800.

B. Annual registration fee. The Department shall bill an annual registration to a generator of shredder residue, a special waste receiving facility, and a special waste shipper that that has a special waste identification number that has not filed a notice of termination of registration with the Department for each operation as follows:

1. For a generator of shredder residue, $3,000;
2. For a special waste receiving facility, $5,000; and
3. For a special waste shipper, $1,500.

C. A generator of shredder residue, special waste receiving facility, or special waste shipper shall pay the annual registration fee within 30 days of invoice receipt.

D. In accordance with A.R.S. § 49-855(G), a solid waste landfill that pays registration fees under A.R.S. § 49-747 is exempt from the fees under subsections (A) and (B) of this Section.

E. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (A) and (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (E)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles; Fees

A. No change

1. No change

a. No change

i. No change

ii. No change

b. No change

i. No change

ii. No change

2. No change

3. No change

4. No change

a. No change

b. No change

c. No change

5. No change

6. No change

7. No change

8. No change

9. No change

10. No change

B. No change

C. No change

1. No change

2. No change

3. No change

4. No change

5. No change

6. No change

7. No change

D. No change

E. No change

F. Shredder residue which has been determined to be nonhazardous pursuant to this Section shall be transported in accordance with the requirements for transportation of garbage as set forth in R18-13-310.

~~**F.**~~ **G.** The owner or operator of a special waste facility shall pay, to the Department, the fees required by A.R.S. §§ 49-855(C)(2) and 49-863 as follows:

~~1. $1.49 per cubic yard of uncompacted shredder residue; or~~

~~2. $3.38 per cubic yard of compacted shredder residue received; or~~

~~3.~~ 1. ~~$4.50~~ $6.68 per ton of shredder residue received; and

~~4.~~ 2. Not more than ~~$45,000~~ $66,835.67 per generator site per year for shredder residue that is transported to a facility regulated by the Department for treatment, storage or disposal.

~~G.~~ **H.** ~~Shredder residue which has been determined to be nonhazardous pursuant to this Section shall be transported in accordance with the requirements for transportation of garbage as set forth in R18-13-310.~~ Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (G) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (H)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS

R18-13-1409. Transporter License; Fees; Transportation

A. A transporter shall obtain a transporter license from the Department as provided under subsections (B) and (C) of this Section in addition to possessing a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.

B. A transporter license is valid for five years after issuance. To renew the license, the licensee shall submit an application ~~under subsection (B)(1)~~ no later than 60 days prior to the license's expiration, and shall pay the license renewal fee, as provided in subsection ~~(B)(2)~~ (B)(1). With each application submitted for approval, the applicant shall remit an initial transporter license application fee ~~in accordance with Table 1. Fee Table - Transporter License Fees; Frequency of Application for Transporter License. This Table also lists the maximum fees that the Department will bill the applicant.~~ as provided in subsection (B)(1). All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

1. To apply for or to renew a transporter license, an applicant shall submit all of the following in a Department-approved format:

   a. The name, address, and telephone number of the transportation company or entity.

   b. All owners' names, addresses, and telephone numbers.

   c. All names, addresses, and telephone numbers of any agents authorized to act on behalf of the owner.

   d. A copy of either the certificate of disclosure required by A.R.S. § 49-109 or a written acknowledgment that this disclosure is not required.

   e. Photocopies or other evidence of the issuance of a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.

   f. A copy of the transportation management plan as defined in R18-13-1401.

   g. A list identifying each dedicated vehicle.

   h. ~~The~~ For an initial transporter ~~application~~ license application, a fee ~~indicated in Table 1. Fee Table – Transporter License Fees; Frequency of Application for Transporter License.~~ of $1,800, and for a license renewal, a fee of $1,500.

~~2. The new or renewal application license fee shall be calculated by multiplying the hourly rate of $122 by the number of personnel hours involved in inspecting each transporting vehicle, evaluating the application, and approving the license, which amount shall be subtracted from the initial application license fee on deposit. Any remaining surplus of the initial application license fee on deposit shall be returned to the applicant. Any cost that exceeds the initial application license fee on deposit shall be billed to the applicant, but shall not exceed the maximum.~~

~~3.~~ 2. The Department may only issue a transporter license, including a renewal, if all of the items in subsection (B)(1)(a) through (h) have been received and determined to be correct and complete, and a Department inspection of each transporting vehicle shows that the vehicle is in compliance with this Article.

C. Transporters shall pay by the invoice due date an annual fee of ~~$750~~ $1,500 for each calendar year following payment of the new or renewal application license fee and subsequent years in which a renewal application license fee is not charged and paid, ~~such as~~ indicated in Table 2. Fee Table, Transporters Annual Fee.

D. Amendments. After issuance, the licensee shall submit to the Department any change to the information listed in subsections (B)(1)(a) through ~~(h)~~ (g) of this Section within 30 days of its occurrence. Vehicles may only be added to the license after a Department inspection shows that the vehicle is in compliance with this Article. Amendments adding vehicles to the license shall be processed after payment of

inspection fees and other expenses ~~at the rate listed in subsection (B)(2)~~, except that the application fee shall be ~~$100 and the maximum fee $5,000~~ $350.

~~E. An applicant who disagrees with the final bill received from the Department for the amendment, issuance, renewal or denial of a transporter license or vehicle inspections may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.~~

~~F. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. §§ 41-1092 through 1092.12.~~

~~G.~~ **E.** No change

~~H.~~ **F.** No change

~~I.~~ **G.** No change

1. No change
2. No change
3. No change

~~J.~~ **H.** A person who transports biohazardous medical waste in a vehicle not dedicated to the transportation of biohazardous medical waste, but that is used at least once weekly for a month, shall comply with the following:

1. Subsections (A), ~~and (G)~~ (E) through ~~(K)~~ (G), and (I) of this Section.
2. Clean the vehicle as prescribed in R18-13-1407(A)(2)(b) before it is used for another purpose.

~~K.~~ **I.** No change

1. No change
2. No change
3. No change
   a. No change
   b. No change
   c. No change
4. Not hold biohazardous medical waste longer than specified under subsection ~~(K)~~ (I)(3) unless the vehicle is parked at a Department-approved facility.
5. No change

J. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (B), (C), and (D) of this Section, and Table 2. Fee Table, Transporters Annual Fee, annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (J)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Table 1. ~~Fee Table - Transporter License Fees;~~ Frequency of Application for Transporter License

~~**Transporter License Fees**~~

	~~**Initial**~~	~~**Maximum**~~
~~New Application~~	~~$2,000~~	~~$20,000~~
~~Renewal Application~~	~~$2,000~~	~~$20,000~~
~~Amendment Application~~	~~$100~~	~~$5,000~~

~~**Frequency of Application for Transporter License**~~

Year	**Type of Application**	**Frequency**
1	New	Once
6, 11, 16, etc.	Renewal	Every 5th Year

Table 2. Fee Table – Transporter Annual Fee

Years	**Amount**
2, 3, 4, 5, 7, 8, 9, 10, 12, 13, etc.	~~$750~~ $1,500

R18-13-1410. Storage, Transfer, Treatment, and Disposal Facilities; Facility Plan Approval; Fees

A. A person shall obtain solid waste facility plan approval from the Department as prescribed in A.R.S. § 49-762.04 and pursuant to R18-13-702 to construct any facility that will be used to store, transfer, treat, or dispose of biohazardous medical waste that was generated off site. Plan approval shall be obtained before starting construction of the medical waste treatment or disposal facility. This requirement also

applies to solid waste facilities for which an operator self-certifies under A.R.S. § 49-762.05, if the facility also will receive biohazardous medical waste.

B. No change

C. No change

D. Annual registration fee. The Department shall bill an annual registration fee to a biohazardous medical waste facility described in subsection (A) of this Section as follows:

1. For a disposal or treatment facility, $12,500;
2. For a storage facility, $7,500; and
3. For a transfer facility, $3,000.

E. A facility subject to more than one fee under subsection (D) of this Section shall only pay the highest fee amount.

F. The biohazardous medical waste facility shall pay the annual registration fee within 30 days of invoice receipt.

G. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (D) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (G)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

R18-13-1606. Fees

A. In accordance with A.R.S. §§ 49-855(C)(2) and 49-863, the treatment, storage, or disposal facility in this state that first receives a shipment of PCS shall remit to the Department a fee of ~~$4.50~~ $6.68 per ton but not more than ~~$45,000~~ $66,835.67 per generator site per year for PCS that is transported to the facility.

B. Initial registration fee. Upon making a request for a special waste identification number on a form as provided by the Director pursuant to Article 13, A generator of PCS shall submit to the Department an initial registration fee of $900.

C. Annual registration fee. The Department shall bill an annual registration fee to a generator of PCS or special waste receiving facility that has received facility approval under R18-13-1607 that has not filed a notice of termination of registration with the Department as follows:

1. For a generator of PCS, $750; and

2. For a special waste receiving facility, $5,000.

D. The generator of PCS or special waste receiving facility shall pay the annual registration fee within 30 days of invoice receipt.

E. In accordance with A.R.S. § 49-855(G), a solid waste landfill that pays registration fees under A.R.S. § 49-747 is exempt from the annual registration fee under subsection (C) of this Section.

F. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (A), (B), and (C) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.

2. Round the result from subsection (F)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

ARTICLE 19. LEAD ACID BATTERY RECYCLING

R18-13-1901. Collection or Recycling Facility of Lead Acid Batteries; Registration; Fees

A. Initial registration. The owner or operator of an existing collection or recycling facility that accepts lead acid batteries as of the effective date of this Section shall register with the Department by March 1, 2025, on a form approved by the Department. A collection or recycling facility shall not begin operation to accept lead acid batteries until the owner or operator registers with the Department on a form approved by the Department that includes a statement that the facility is in compliance with A.R.S. § 44-1322. The owner or operator of a new collection or recycling facility of lead acid batteries shall submit an initial registration fee of $810 at the time of registration under this subsection.

B. Annual registration fee. The Department shall bill an annual registration fee of $675 to a registered collection or recycling facility that has not filed a notice of termination of registration with the Department. The owner or operator of a registered collection or recycling facility shall pay the annual registration fee within 30 days of invoice receipt.

C. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (A) and (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban

Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.

2. Round the result from subsection (C)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

D. For purposes of this Section, "lead acid battery" means a battery with a core of elemental lead and a capacity of six or more volts that is suitable for use in a vehicle or a boat.

ARTICLE 20. USED OIL

R18-13-2001. Definitions

A. "40 CFR 279", and any section therein, refers to 40 CFR part 279, as amended on January 1, 1997, and no future editions or later amendments. Copies of 40 CFR 279 are available at https://www.govinfo.gov/app/collection/cfr/. Copies are on file with the Department.

B. "CFR" means the Code of Federal Regulations.

C. "Department" means the Arizona Department of Environmental Quality.

D. "Used oil" means the same as defined in 40 CFR 279.1 and includes oil that has been contaminated as a result of handling, transportation, or storage.

E. "Used oil collection center" means the same as defined in 40 CFR 279.1.

F. "Used oil burner" means the same as defined in 40 CFR 279.1.

G. "Used oil fuel marketer" means the same as defined in 40 CFR 279.1.

H. "Used oil handler" means a used oil burner, used oil marketer, used oil transporter, or used oil processor.

I. "Used oil processor" means the same as defined in 40 CFR 279.1.

J. "Used oil transporter" means the same as defined in 40 CFR 279.1.

R18-13-2002. Used Oil Handler Registration; Fee

A. Initial registration. A new used oil handler that has received, or is required to obtain, an EPA identification number pursuant to 40 CFR 279 shall not begin operation until the owner or operator registers with the Department on a form approved by the Department. A new used oil handler shall submit an initial registration fee at the time of registration under this subsection as follows:

1. For a used oil processor, $9,000;
2. For a used oil burner, $15,000;
3. For a used oil transporter, $1,800; and
4. For a used oil fuel marketer, $1,800.

B. Annual registration fee. The Department shall bill an annual registration fee to a used oil handler that has received, or is required to obtain, an EPA identification number pursuant to 40 CFR 279 that has not filed a notice of termination of registration with the Department as follows:

1. For a used oil processor, $7,500;
2. For a used oil burner, $12,500;
3. For a used oil transporter, $1,500; and
4. For a used oil fuel marketer, $1,500.

C. The registered used oil handler shall pay the annual registration fee within 30 days of invoice receipt.

D. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (A) and (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (D)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

R18-13-2003. Used Oil Collection Center Identification Number; Requirements

A. A used oil collection center shall request a used oil collection center identification number on a form provided by the Director pursuant to A.R.S. § 49-802(C) that contains all of the following:

1. The company name;
2. The name of the owner of the company;
3. The mailing address and telephone number of the company;
4. The location of the collection center; and
5. A description of the type of used oil activity at the company.

B. Within 30 days of receiving the completed form, the Director shall issue the identification number to the used oil collection center.

ARTICLE 21. SOLID WASTE LANDFILL REGISTRATION AND DISPOSAL FEES

R18-13-2101. Definitions

In addition to the definitions in A.R.S. §§ 49-701 and 49-701.01, for the purpose of this Article, the terms used in this Article have the following meanings:

1. "Defined time period" means the 12-month period that begins on July 1 of a calendar year and ends on June 30 of the following calendar year and consists of the actual number of calendar days in that 12-month period.
2. "Disposal fee invoice" means the quarterly landfill disposal fee invoice the Department mails to a landfill operator, on which the landfill operator indicates the amount of waste received and the amount of the disposal fees owed to the Department as required under A.R.S. § 49-836.
3. ~~"Full quarter" means any of the standard fiscal quarters of the defined time period for which a municipal solid waste landfill accepted waste on or before the first day of the quarter and on or after the last day of that quarter.~~
3. "Local public facility" means a facility operated pursuant to A.R.S. § 49-741.
4. "Recycling residue" means waste generated from recycling:
   a. solid waste; or
   b. effluent from a secondary wastewater treatment plant or wastewaters.

R18-13-2102. Solid Waste Landfill Registration; Annual Registration Fee ~~for an Existing Solid Waste Landfill~~

A. An operator of a new solid waste landfill shall register the solid waste landfill with the Department on a form approved by the Department.

B. An existing solid waste landfill~~, except those described in subsection (C)~~, shall pay an annual registration fee within 30 days of receipt of an invoice from the Department according to the following:

1. For ~~municipal~~ solid waste landfills that received less than ~~12,000~~ 60,000 tons during the defined time period, ~~$1,250~~ $5,000.
2. For ~~municipal~~ solid waste landfills that received at least ~~12,000~~ 60,000 tons but less than ~~60,000~~ 225,000 tons during the defined time period, ~~$2,500~~ $10,000.
3. For ~~municipal~~ solid waste landfills that received ~~at least 60,000 tons but less than~~ 225,000 tons or more during the defined time period, ~~$7,500~~ $18,565.
4. ~~For municipal solid waste landfills that received 225,000 tons or more during the defined time period, $12,500.~~
5. ~~Non-municipal solid waste landfills shall pay a flat fee of $3,750.~~
6. ~~Solid waste landfills that are closed to the public and that accept nonhazardous waste only shall pay a flat fee of $3,750.~~

~~**B.**~~ **C.** The Department shall determine the amount of waste received by a ~~municipal~~ solid waste landfill by one of the following methods:

1. ~~For a municipal solid waste landfill that accepted waste over the entire defined time period:~~

~~a.~~ 1. As the reported tons of solid waste received on the disposal fee ~~invoice~~ invoices over the defined time period; or

~~b.~~ 2. As the reported units of compacted or uncompacted solid waste received on the disposal fee ~~invoice~~ invoices and reported under ~~A.R.S. § 49-836(A)(1); or~~ R18-13-2104 over the defined time period.

~~2. For a municipal solid waste landfill that accepted waste for only a portion of the defined time period, but no less than a full quarter, the Department shall project the total amount of waste that would have been received by the landfill over the entire defined time period, using one of the following methods:~~

~~a. For a municipal solid waste landfill that reported receiving waste for at least a full three quarters but less than the entire defined period, the amount of waste for the remaining quarter is the total amount of the waste reported for the full three quarters divided by three;~~

~~b. For a municipal solid waste landfill that reported receiving waste for at least a full two quarters but less than three quarters, the amount of waste for the remaining two quarters is the same as the total amount of waste reported for the two full quarters; or~~

~~c. For a municipal solid waste landfill that reported receiving waste for at least one full quarter but less than two quarters, the amount of waste for the remaining three quarters is the total of the amount of the waste reported for the full quarter multiplied by three.~~

~~C. For a municipal solid waste landfill that accepted waste for less than a full quarter, the annual landfill registration fee is $1,250.~~

D. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.

2. Round the result from subsection (C)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

R18-13-2103. ~~Annual Landfill Registration: Due Date and Fees~~ Landfill Closure and Post-Closure Care Obligations; Fees

~~A. An operator of a new solid waste landfill shall register the solid waste landfill and pay the landfill registration fee as follows:~~

~~1. The operator shall pay the initial landfill registration fee within 30 days of the date that the Department approves the facility plan. The initial landfill registration fee is $1,250.~~

~~2. Registration is valid for one year, except if the landfill is initially registered during October, November, or December of a calendar year, the next landfill registration due date is December 31 of the following calendar year and each calendar year thereafter unless released from the annual landfill registration requirement as specified in subsection (C).~~

~~3. The annual registration fee remains $1,250 until the first annual registration period after the first full quarter of the defined time period.~~

~~**B.**~~ **A.** ~~After the first full quarter, the Department shall calculate the annual registration fee according to R18-13-2102, and specify the fee on the Department's annual landfill registration invoice for the solid waste landfill.~~ The Department shall calculate and the solid waste landfill shall pay the annual landfill registration fee until the first ~~registration~~ defined time period after the solid waste landfill stops accepting waste ~~during a fiscal quarter of the defined time period~~.

~~**C.**~~ **B.** From the time a solid waste landfill stops accepting waste as specified in subsection ~~(B)~~ (A), until the owner or operator of the solid waste landfill ~~is released from its obligation to provide financial assurance for closure~~ has completed closure and is released from its obligation for post-closure care as required by A.R.S. §§ 49-761 or 49-770, the annual registration fee is ~~$1,250~~ $3,500.

C. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (C)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

R18-13-2104. Solid Waste Landfill Disposal Fee; Exemptions

A. The operator of a solid waste landfill shall pay to the Department the disposal fee required by A.R.S. § 49-836 as follows:

1. $.58 for each six cubic yards of uncompacted solid waste;
2. $.58 for each three cubic yards of compacted solid waste; or
3. $.58 per ton of solid waste.

B. A solid waste landfill that receives only waste generated on site shall compute the fee in subsection (A) of this Section by one of the following methods:

1. By actual volume or weight; or

2. By estimate based on landfill capacity use, volume or number of waste loads or any other reasonable means for approximating the volume or weight of disposed waste.

C. Facilities that generate recycling residue shall pay the disposal fee required by A.R.S. § 49-836 as follows, to an annual maximum of $34,942.20, for on-site disposal:

1. $.29 for the dry weight or volume of the recycling residue generated; or

2. $.29 for the dewatered weight or volume of the recycling residue generated.

D. A person who for a fee disposes of waste in a solid waste landfill that is not regulated by the Department shall keep accurate records of the waste disposed of in those landfills and shall pay to the Department the disposal fee as prescribed in subsection (A) of this Section.

E. The operator of a local public facility that does not have on-site operators or scales shall pay to the Department a fee that shall be calculated by multiplying the population of the political subdivision served by the local public facility by $.16.

F. A person who is subject to fees under this Section shall sign and submit a form prepared by the Department with each fee payment. The form shall state the total volume or weight of solid waste disposed of at that landfill during the payment period.

G. The following are exempt from the requirements of this Section:

1. Persons disposing of a load containing less than six cubic yards of uncompacted solid waste or three cubic yards of compacted solid waste.

2. A site used solely for the reclamation of land through the introduction of landscaping rubble or inert material.

3. Material produced in connection with a mining or metallurgical operation.

ARTICLE 22. NEW TIRE SELLERS

R18-13-2201. Definitions

A. "Motor vehicle" means any automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination or other vehicle operated on the roads of this state, used to transport persons or property and propelled by power other than muscular power, but motor vehicle does not include traction engines, vehicles that run only on a track, bicycles or mopeds.

B. "Tire seller" means a retail seller of motor vehicle tires or a wholesale seller of motor vehicle tires who sells tires to the state, to a political subdivision of the state, or to a private entity not for resale, and includes a person whose retail sales of new motor vehicle tires are not in the ordinary course of business.

R18-13-2202. New Tire Sellers; Fee

A. Beginning April 1, 2025, a tire seller of new motor vehicle tires shall collect a fee of 2% of the retail sales price, not including transaction privilege tax, of each tire to a maximum of $4.66 per tire. For the sale of a new motor vehicle with a gross weight of under 10,000 pounds by a manufacturer to a wholesaler or retailer, if the sales price of the tires is not specified by the manufacturer, the tire seller shall collect a fee of $2.33 per tire.

B. A seller required to collect a fee under subsection (A) of this Section may credit $.10 per tire against the fee for expenses incurred by the seller for accounting and reporting related to the fee.

C. A seller who collects a fee under subsection (A) of this Section shall remit the fee to the Arizona Department of Revenue for deposit on a quarterly basis in the waste tire fund established pursuant to section A.R.S. § 44-1305.

D. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (A) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (D)(1) to the nearest cent. ADEQ shall notify the Arizona Department of Revenue of the adjusted fee amounts and post the new amounts on its webpage as soon as practicable.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY

SOLID WASTE MANAGEMENT

Economic, Small Business, and Consumer Impact Statement

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

Identification of the rulemaking: This rulemaking makes a number of changes to 18 A.A.C. 13, Solid Waste Management, including amendments to Articles 5, 7, 8, 11, 12, 13, 14, 16, and 21; amending Sections R18-13-501, R18-13-702, R18-13-801, R18-13-1103, R18-13-1211, R18-13-1212, R18-13-1307, R18-13-1409, R18-13-1410, R18-13-1606, R18-13-2102, and R18-13-2103, and their respective tables. Additionally, this rulemaking establishes new articles and sections, including Articles 4, 19, 20, and 22 and their respective sections, and new sections in existing Articles, including R18-13-1212.01, R18-13-1306, and R18-13-2104. The purpose of these changes is to both adjust existing fees and establish new fees throughout Solid Waste Management. This rulemaking also establishes in rule fees that currently only exist in statute.

Fees under this rulemaking can be categorized into two broad groups. One group being current fees paid by waste facilities and licensees that would be subject to an adjustment under this rulemaking. These facilities and licensees include publicly and privately-owned landfills, used and waste tire facilities, self-certification transfer facilities, biohazardous medical waste transporters, septage haulers, and special waste facilities that receive shredder residue and petroleum contaminated soil (PCS). The second group of fees are those established under this rulemaking. Facilities and entities subject to a new fee include transfer facilities subject to best management practices, used oil handlers, medical waste facilities that are permitted for storage or treatment, facilities generating or transporting special waste, landfills that enter into post-closure care, and collection and recycling facilities accepting lead acid batteries.

These rule changes are intended to collect fees to ensure the financial stability of Solid Waste Management programs, not to change the conduct of any regulated facilities or entities. The last time ADEQ undertook any substantive review and adjustments of fees within Solid Waste Management was in 2012. While fees established in 2012 represented a critical step towards the goal of full program

sufficiency and stability, further work is necessary to realize this goal. Indeed, to date only half of all regulated facilities under Solid Waste Management are subject to fees for registration, inspection, and oversight notwithstanding ongoing statutory mandates.

Experience over the last several years has demonstrated the need for a comprehensive approach to fees throughout Solid Waste Management, one that promotes equal cost distribution amongst all regulated facilities and entities and ensures the financial health of Solid Waste Management as a whole for the effective and efficient carrying out of the Program's mission.

ADEQ's goal in this rulemaking is to adjust and establish fees throughout Solid Waste Management that will sustain critical programs while avoiding disproportionate impact on any one group of stakeholders or regulated entities. Currently, ADEQ's annual costs to administer all solid waste programs are estimated to total $3.5 million per year. However, current annual registration fee revenue is estimated at roughly $500,000. Other revenue sources include the 3.5% of the Waste Tire Fund allocated to the Solid Waste Fee Fund based upon the number of tires sold and the special waste tonnage tipping fee based upon the amount of special waste disposed within the state. While variable, these other revenue sources are critical, representing approximately half of revenues into the Solid Waste Fee Fund. ADEQ continues to operate with total revenues that are insufficient to cover costs. The adjusted and newly established fees in this rulemaking are now projected to contribute and ultimately result in approximately $2.1 million in additional fee revenue for the Solid Waste Fee Fund.

Regulatory Objective: The Waste Program Division within ADEQ preserves and protects public health and the environment by reducing the risk associated with waste management, contaminated sites, and regulated substances. To fulfill this objective, ADEQ carries out a number of Agency functions corresponding to regulatory and oversight activities for the approximately 2,000 different facilities and entities that fall under Solid Waste Program (SWP) regulation, including: administrative operations; inspections, including pre- and post-inspection activity encompassing historic data and permit review, case closure, and necessary filing; permitting and licensing; public records management; complaint response; and compliance assistance. It is critical that ADEQ has the ability to fully perform all necessary Agency functions to continue to carry out its mission to ensure the continued health of our solid waste ecosystem.

Least Burden and Cost: A.R.S. § 41-1052(D)(3) requires ADEQ to demonstrate it has selected the alternative with the least burden and cost necessary to achieve the underlying regulatory objective. Similarly, pursuant to A.R.S. § 49-104(B)(17), ADEQ is charged with ensuring all fees "be fairly assessed

and impose the least burden and cost to the parties subject to the fees" based upon an evaluation of "the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses." This statutory mandate is reinforced by HB2367, which states in Section 17, Legislative Intent, that fees established pursuant to the bill be based upon "direct and indirect costs associated with the type of activity or facility that is assessed a fee."

In the context of this solid waste fees rule, ADEQ has interpreted this requirement to mean collecting fee amounts necessary to ensure a self-funded and sustainable SWP to satisfy ADEQ's detailed requirements to protect and enhance public health and the environment as specified in A.R.S. Title 49, Chapter 4, Solid Waste Management.

Based on ADEQ's interpretation of the statutory mandate that the rule impose the least burden and cost, ADEQ evaluated costs for regulating each type of facility and entity and set fees accordingly. ADEQ continued throughout the rulemaking process to adjust the fee proposal to impose the least burden and cost while still ensuring overall fee levels necessary to ensure a self-funded and sustainable SWP. Examples include:

- Establishing separate registration fee amounts in R18-13-1103 for septage haulers based on whether ADEQ is tasked with conducting annual inspections or such inspections are handled by counties to be reflective of actual costs to ADEQ.
- Setting an annual registration fee in R18-13-1410 specifically for biohazardous medical waste transfer facilities to ensure fees are commensurate with ADEQ's related regulatory costs and corresponds to other transfer facility fees.
- Leaving initial fees for solid waste plan review at their current levels in R18-13-702 to improve clarity and ease of initial application for facilities subject to plan review while still ensuring necessary cash flow to ADEQ to facilitate commencing facility plan reviews.
- Adjusting the annual registration fee for the largest class of landfills, those that annually receive 225,000 or more tons of waste, by the regional CPI instead of the initial, higher annual registration fee proposed in the NPRM.
- Changing the first annual registration fee of increased fees so that payment of the fee will occur over two invoices as well as delaying payment of new annual registration fees and first quarter landfill disposal and special waste tonnage until July 2025 to correspond with the fiscal year. Following any initial invoicing or other change for the first year of implementation, billing for

facilities and entities will return to a single invoice for all new and adjusted annual registration fees for the calendar year billing cycle in January 2026.

- Setting back the annual CPI adjustment to July instead of January, coinciding with the fiscal year. This affords stakeholders more time in preparing budgets aligned with the fiscal year.
- Setting an annual cap of 4% on the CPI adjustment of the fee amount of the preceding year. This CPI cap will promote stability and predictability year-on-year for stakeholders during budgeting and cost forecasting.

Fairly Assessed: To ensure the fees adjusted and established under this rulemaking be fairly assessed against each member of the regulated community subject to them, ADEQ conducted extensive stakeholder engagement, including three rounds of stakeholder meetings to present all proposed fee levels, explain the basis for the fees, provide detail on the need for and methodology of the annual CPI adjustments, and present rule language. ADEQ was able to solicit productive feedback from the regulated community. This feedback guided ADEQ in assessing and adjusting proposed fee levels and implementation to impose the least burden on members of the regulated community to the fullest extent possible.

In addition to engagement with and feedback from the regulated community, ADEQ reviewed costs associated with Agency functions in carrying out regulated activities, with costs identified and distinguished by facility type. Based upon these costs, ADEQ employed the fee methodology discussed in Part 7 of the Preamble, "Explanation of Fee Methodology", that set fees for each class of facility or entity.

Implementation Schedule: In furtherance of ADEQ's goal to ensure the proposed fees impose the least burden and cost, ADEQ evaluated the feasibility of an implementation schedule that balances the fiscal health of SWP and the budget constraints of the regulated community subject to the fees. Currently, ADEQ sends out invoices for registration fees to correspond with the calendar year. However, a recurring point of discussion throughout the rulemaking process was the concern of implementing a new fee or fee increase in the middle of the fiscal year for many counties, municipalities, and other political subdivisions. As such, while the rule and fees would become effective as of January 2025, fees will be implemented pursuant to a schedule for CY2025 to accommodate the fiscal needs of counties, municipalities, and other political sub-divisions.

This implementation schedule is discussed in greater detail and presented in a series of tables in Part 7 of the Preamble, "Implementation Schedule".

Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking: Stakeholders directly affected by this rulemaking include all 15 counties within the state, local municipalities, and the approximately 2,000 solid waste facilities and entities with different media types subject to ADEQ regulatory compliance and oversight under Solid Waste Management, as well as the general public. These facilities may be categorized as government and privately owned. Approximately 13% of all solid waste facilities and entities are owned by a political subdivision of the state, with the remaining being privately owned and operated, ranging from individual licensees to large, multistate businesses. These facilities and entities include solid waste transfer facilities of varying size and sophistication, from rural drop-site locations to city facilities, septage hauler licensees, waste tire sites, off-site facilities registered for the treatment, storage, or disposal of auto-shredder residue, special waste transporters and generators, biohazardous medical waste transport companies, used oil handlers and collectors, facilities accepting lead acid batteries for collection or recycling, and both public and privately-owned landfills.

These facilities and entities are discussed in greater detail in the "Cost/Benefit Analysis" to follow.

Cost/Benefit Analysis: The estimated total impact for this rule is $12 million, which is the approximate total amount of increased fees proposed across all programs. This estimated impact is subject to annual adjustment pursuant to the proposed regional CPI adjustment. Approximately $1.8 million in increased fees would be collected pursuant to the proposed new and adjusted fees, including the special waste tonnage tipping fee, for regulated facilities and entities to be deposited into the Solid Waste Fee Fund. $6.7 million of increased fees would be collected through the fee on the sale of new tires as incorporated, with this cost borne by sellers and purchasers of new tires throughout the state. Of this $6.7 million, 3.5% or approximately $237,000 would be deposited to the Solid Waste Fee Fund pursuant to A.R.S. § 44-1305(B)(1), resulting in the total proposed increased revenues to the Solid Waste Fee Fund of approximately $2.1 million. The remaining revenues from the fee on the sale of new tires are apportioned to the counties as provided in law. Finally, approximately $3.5 million in increased fees would be collected pursuant to the landfill disposal fee as incorporated to be deposited into the Recycling Fund pursuant to A.R.S. § 49-836.

ADEQ finds that the benefits associated with this rule change outweigh any foreseen or anticipated costs, as discussed in further detail below.

Probable benefits include:

- Allow the Recycling Fund to be more fully utilized for its intended purpose. Since the loss of General Fund revenues and the establishment of the fee-based program model in 2012, it has been necessary to expend from the Recycling Fund to cover management of solid waste regulatory programs. By ensuring full cost-recovery and program funding through this proposed rulemaking, expenditures from the Recycling Fund to cover solid waste management may be addressed, allowing appropriations under the Recycling Fund to be used for the stated purpose of that fund. ADEQ is committed to expenditures from the Recycling Fund being used for the stated purpose of grants and contracts for "research, demonstration projects, new technologies, market development and source reduction studies and implementation of the recommendations or reports prepared." *See* A.R.S. § 49-837(B)(1).
- Minimize public health risks from solid waste activities. Fee levels ensuring full cost-recovery to ADEQ for regulatory activities and program stability are critical to allow ADEQ to adequately perform all its duties relating to its mission to enhance public health and the environment, including inspections, monitoring, public education, compliance, and permitting.
- Ability to address the obligations cited in the 2021 Auditor General's Report. The Auditor General's September 2021 Performance Audit and Sunset Review Report noted ADEQ has not yet adopted all statutorily required rules. Specifically, the Report notes A.R.S. § 49-761 requires the Department to adopt various rules for solid waste facilities, such as requirements for storing, processing, treating, and disposing of solid waste; best management practices for these facilities; and financial assurance requirements for facility closure. The Report ultimately recommends such rules should be adopted as required by statute. By ensuring appropriate funding levels and future programs security, ADEQ will be better positioned to undertake further rulemakings to address this recommendation of the Auditor General.
- Ability to address regulatory vacuum to protect public health and the environment as well as promote business development. With adequate and sustainable funding, SWP may increase inspection and enforcement activities to address and mitigate any regulatory vacuum within the solid waste universe. A greater ability to engage in regulatory activities provides a stronger deterrence to behavior that is harmful to the environment and public health, mitigates any unlevel playing field between competing facilities, and provides certainty for prospective business in estimating and planning for standards and operation requirements that must be adhered to.
- Ensure fee revenues continue to match increasing costs to ADEQ through regional CPI adjustment. The annual adjustments in the proposed rule will allow SWP to maintain fee levels commensurate with rising costs due to inflation to facilitate cost-recovery year over year and continued program stability.

This cost/benefit analysis includes an analysis of the following elements pursuant to A.R.S. § 41-1055(B)(3):

- Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking: probable benefits to ADEQ by the implementation of this rule include ensuring that SWP becomes sustainable, secure, and self-sufficient as a fully fee-based program. Additionally, benefits include allowing the Recycling Fund to be more fully utilized for its intended purpose, minimizing public health risks from solid waste activities, allowing ADEQ to address obligations cited in the 2021 Auditor General's Report, and to maintain fee levels commensurate with rising costs due to inflation to facilitate cost-recovery year on year and continued program stability. Probable benefits to ADEQ are discussed in greater detail in Part 7 of the Preamble. A probable cost to ADEQ in the implementation of this rulemaking is the administrative costs associated with administering these fees, including in accordance with the proposed implementation schedule and updating the fees annually pursuant to the regional CPI adjustment. No new full-time employees are necessary to implement or enforce this rule.

  The Arizona Department of Revenue is charged with the collection of the new tire sales fee, 2% of the sale price of a new tire capped at $2.00, pursuant to A.R.S. § 44-1302. This rulemaking incorporates this existing fee into rule at R18-13-2202, with an adjustment to the fee cap based upon CPI as well as a continuing annual regional CPI adjustment to the cap. As such, it will be necessary for the Department of Revenue to update each year the quarterly Motor Vehicle Waste Tire Fee return form to reflect the new fee cap. This will present a new administrative cost to the Department of Revenue in the timely updating and dissemination of the return form.

  Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking: probable benefits to political subdivisions by the implementation of this rule include the increased fee revenues of approximately $6.5 million apportioned to the counties based on registered motor vehicles for the administration of each county's waste tire program pursuant to the incorporation and adjustment of the new tire sales fee. ADEQ has heard that costs for running these waste tire programs have increased, creating additional strains on counties attempting to fully administer their respective programs as required by A.R.S. § 44-1305. Increased fee revenues to be apportioned to the county waste tire programs will provide more money for each county to administer its required waste tire program. Additionally, increased fee revenues ensuring overall program health and

self-sufficiency for SWP will strengthen the capacity for ADEQ to partner with counties and other political subdivisions to address key waste issues, such as wildcat, or illegal, dumping of waste, including increased enforcement activity and clean-up efforts.

Probable costs to political subdivisions from the implementation of this rule are the increased and new fees each political subdivision will be subject to for their county and municipal solid waste facilities and entities, as well as the increased landfill tonnage fees. Of the total approximately 2,000 solid waste facilities and entities regulated by ADEQ, the Agency estimates 13% are owned and operated by political subdivisions. This total includes approximately 26 active municipal landfills as well as 19 landfills currently in post-closure care.

Other facilities owned and operated by political subdivisions include:

- Used and waste tire sites. These include sites storing 100 or more used tires outdoors, as well as waste tire sites subject to self-certification and best management practices. Used and waste tire sites are often operated by and for counties under county waste tire collection programs. There are approximately 30 publicly operated used and waste tire sites.
- Transfer facilities subject to both self-certification and best management practices. To note, exempted from the definition of transfer facilities for purposes of registration fees are material recovery facilities where the incoming materials are primarily source separated recyclables and community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, or governmental recyclable solid waste. There are approximately 80 publicly operated transfer facilities maintained by counties and municipalities throughout the state.
- Septage haulers. While the majority of licensed septage hauler vehicles are privately owned and operated, some political subdivisions maintain licensed septage vehicles for purposes of sanitation and public departments. There are approximately 40 septage hauler licensed vehicles maintained by political subdivisions.
- Collection or recycling facility that accepts lead-acid batteries. Counties and municipalities often maintain registered household hazardous waste sites that accept lead-acid batteries. There are approximately 30 such registered facilities throughout the state.

- Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking: With fees resulting in a fully-funded SWP, ADEQ may engage in greater compliance assistance for regulated facilities and entities. Further, ADEQ will have more resources to facilitate more expeditious permit review, both for new permits and renewals. This will allow permit applicants to begin facility operations sooner, mitigating administrative burdens associated with permit review time and allowing for faster business development, while still maintaining high regulatory standards for facilities and solid waste operations to ensure the protection of human health and the environment.

  Further, a fully-funded SWP will provide ADEQ with the resources needed to engage in greater oversight and compliance, ensuring a more level playing field between regulated businesses and entities. With greater enforcement and oversight, ADEQ may better identify and address pollution, spills, and failures to meet regulatory requirements. This further promotes adherence to regulation amongst all facilities, mitigating the harm to those facilities and entities that must compete with and operate in the same regulatory space as those facilities and entities that may fail to adhere to minimum standards. Additionally, SWP may engage in more robust partnership with the regulated community through activities and programs designed to promote compliance and assistance. Increased program funding and stability can result in greater collaboration with the regulated community, including greater engagement by SWP sections in outreach that help facilities understand and comply with applicable regulations.

  Probable costs to businesses directly affected by the rulemaking include the new or increased fees privately-owned solid waste facilities and entities will be subject to, as well as increased landfill tonnage and special waste tonnage fees.

  There are approximately 27 active landfills and 7 landfills in post-closure care that are privately owned and operated subject to regulation by ADEQ.

  Privately-owned regulated facilities and entities also include those described below:

  - Transfer facilities subject to self-certification or best management practices. These facilities are located throughout the state and range in size and sophistication. Self-certification transfer facilities are those that handle a daily throughput of more than 180 cubic yards of solid waste, while transfer facilities subject to best management practices are those that handle a daily throughput of 180 cubic yards or less of solid

waste. To note, mirroring public transfer facilities, exempted from the definition of transfer facilities for purposes of registration fees are material recovery facilities where the incoming materials are primarily source separated recyclables and community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, or governmental recyclable solid waste. There are approximately 80 privately-owned transfer facilities throughout the state.

- Used oil handlers. Used oil handlers are defined as used oil processors, burners, transporters, and marketers required to obtain an EPA identification number pursuant to 40 CFR 279. The majority of the used oil handlers are transporters and marketers, representing 85% of registered used oil handlers. Used oil transporters are anyone that collects or accepts used oil from regulated handlers and transports that used oil to another facility while used oil marketers are anyone who markets used oil or first claims that used oil meets the used oil fuel specifications. Common generators of used oil include car repair shops, service stations, quick lube shops, grocery stores, and facilities and entities involved in the metal working industry. There are approximately 230 used oil handlers throughout the state.
- Biohazardous medical waste (BMW) facilities and entities. BMW facilities and entities include BMW transporters, BMW treatment facilities, and BMW storage facilities. There are approximately 50 BMW transporters engaged in moving biohazardous medical waste, as defined in R18-13-1401(4), to an approved disposal facility. There are approximately 20 BMW treatment and storage facilities accepting biohazardous medical waste for proper treatment, storage, and disposal pursuant to regulation.
- Septage haulers. There are over 500 registered privately owned and operated septage hauler licenses throughout the state engaged in the transportation of sewage or human waste that is removed from septic tanks or other onsite wastewater treatment facilities.
- Special waste facilities. Special waste facilities include generators, transporters, and receiving facilities of special waste, defined as solid waste other than hazardous waste requiring special handling and management. Currently petroleum contaminated soils and auto-shredder fluff from shredding motor vehicles are designated special wastes in Arizona. There are approximately 80 special waste transporters, 70 special waste generators, and 16 special waste receiving facilities throughout the state engaged in the transportation, treatment, storage and disposal of special waste.

- Collection or recycling facility that accepts lead-acid batteries. There are approximately 200 registered facilities with ADEQ authorized for the collection and recycling of lead-acid batteries throughout the state.

For the reasons discussed above, ADEQ finds that the benefits associated with this rule change outweigh any foreseen or anticipated costs.

General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking: ADEQ estimates this rulemaking will not have an impact on public or private employment.

Probable impact of the proposed rulemaking on small businesses: Arizona law defines "small business" for the purpose of this analysis as a "concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." *See* A.R.S. § 41-1001(23). The probable impact on small businesses includes an analysis of the following elements pursuant to A.R.S. § 41-1055(B)(5):

- Identification of the small businesses subject to the rulemaking: ADEQ has reviewed its records of solid waste facilities subject to new or adjusted fees affected by this rule to determine which ones are small businesses. An important criterion is that the business must be independently owned and operated. Based on this review and applicable definition, it appears likely that many septage haulers are independently owned and operated and not likely to exceed the revenue and employee limits in the statutory definition of small business. Additionally, it appears likely that a number of used outdoor tire sites storing more than 100 used tires, biohazardous medical waste transporters, certain transfer facilities subject to best management practices, as well as certain used oil handlers would qualify as small businesses for purposes of this rulemaking and collection and recycling facilities accepting lead acid batteries.
- Administrative and other costs required for compliance with the proposed rulemaking: ADEQ does not anticipate appreciable administrative or other costs associated with compliance with the rulemaking. While this rule imposes a financial obligation corresponding with registration of certain facility types, compliance with the requirements of registration has long been a component of SWP. Registration under this rulemaking is administrative, with no additional substantive licensing or approval procedures or requirements compared to those that may already exist for regulated facilities.

- Reduction of Impact on Small Businesses: A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if any of the following methods are legal and feasible in meeting the statutory objectives which are the basis of the rule making:

  1. Establish less stringent compliance or reporting requirements in the rule for small businesses.

  2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

  3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.

  4. Establish performance standards for small businesses to replace design or operational standards in the rule.

  5. Exempt small businesses from any or all requirements of the rule.

The listed methods are not generally relevant to a rule establishing fees. *See* A.R.S. § 49-104(B)(17). However, in developing fee amounts for different categories of facilities and entities, ADEQ was guided by its statutory mandate that all fees be fairly assessed and impose the least burden and cost to the parties subject to the fees. Further, the implementation schedule discussed in greater detail in Part 7 of the Preamble was designed to impose the least burden possible on all facilities and entities subject to fees under this rule, including small businesses.

- Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking: Adequate and sustainable funding for SWP further enables ADEQ to more fully perform its duties relating to its mission to enhance public health and the environment. Benefits to private persons and consumers includes greater enforcement and compliance activities that can be carried out by ADEQ. With adequate funding levels, SWP may conduct more regular inspections of regulated facilities and entities, leading to greater oversight, identification of violations, and corrective actions, resulting in greater minimization of public health risks from solid waste activities. Additionally, adequate funding for SWP will result in sustained and improved Agency response to citizen complaints. Robust engagement with the public is a critical component of ADEQ's mission. SWP receives approximately 80 solid waste complaints from the public annually. The ability to ensure that each complaint is efficiently and effectively fielded, managed, and resolved will be strengthened through adequate funding for SWP.

  Further benefits include greater public outreach and education efforts. For example, the Recycling Program educates and encourages Arizonans to reduce, reuse, recycle, and buy recycled products

as an alternative to solid waste disposal in landfills. The program assists communities and organizations in developing recycling programs, accessing markets for recycled materials, and educating people about the benefits of recycling. Providing information to the public regarding proper residential and commercial disposal of solid waste is another important component of ADEQ's mission.

Probable costs to private persons and consumers includes the increase in the fee cap on the sale of new tires. This rulemaking incorporates into rule the statutory new tire sale fee under A.R.S. § 44-1302 of 2% on the purchase price of each tire sold and raises the per tire cap from $2.00 to $4.66. This is anticipated to result in increased revenues of $6.7 million. This fee is to be collected by the seller of tires and vehicles and often operates as a passthrough fee to be borne by the consumer. The maximum increased cost an individual consumer may be subject to is $10.64 per vehicle purchase or $2.66 per tire replacement, assuming the purchase is of a four-wheel vehicle.

An additional probable cost to private persons and consumers is the potential for increased solid waste disposal costs due to the increase to the landfill disposal fee. The landfill disposal tonnage fee is often a passthrough to residential customers. With the landfill disposal fee being increased based on a CPI adjustment, landfills, both public and privately-owned, may elect to raise rates for residents and customers to offset this increase.

Probable effect on state revenues: ADEQ estimates that fees from this rulemaking will directly affect state revenues by increasing overall annual fee revenue generated across programs and funds by approximately $12 million. This estimate is subject to annual adjustment pursuant to the proposed regional CPI adjustment.

Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: This rulemaking is the least intrusive and costly means possible to achieve the same objectives. ADEQ engaged with stakeholders to explore methods to reduce the impact of new or increased fees, including among other outreach efforts three stakeholder meetings, and established an implementation schedule for the first calendar year of the fees to impose the least burden and cost, as discussed in detail in Part 7 of the Preamble.

Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data: Any data or reasoning which this rulemaking is based on is identified

in the “Rule Scope and Explanation” portion of the Notice of Final Rulemaking located in Part 7. Generally, no new data was introduced or reviewed to make these rule changes.

---------- Forwarded message ---------
From: **Melvin, Cathy** <cmelvin@gilacountyaz.gov>
Date: Fri, Sep 20, 2024 at 2:03 PM
Subject: 2014 HB367
To: SolidWastePermits@azdeq.gov <SolidWastePermits@azdeq.gov>

On behalf of Gila County District 3 Supervisor Woody Cline, I am providing the following statement:

I object to the proposed fees contained in the above referenced bill. This bill will place a financial burden on the county's landfills and that financial burden will be passed on to our constituents. We have worked diligently to combat blight on our public lands and this increase in fees will definitely have a negative effect on the progress that we have made.

Please reconsider the fee structure or extend the time for public comment. I can be reached at 928-402-4401 or by email at wcline@gilacountyaz.gov.

Cathy R Melvin
Executive Administrative Assistant
Woody Cline, District 3 Supervisor
1400 E. Ash Street
Globe, AZ 85501
Phone: 928-402-4401

July 24, 2024

Karen Peters
Chief Executive Officer
Arizona Department of Environmental Quality
1110 W. Washington St., Suite 160
Phoenix, AZ 85007

Dear Mrs. Peters,

Thank you for the opportunity to participate in the Arizona Department of Environmental Quality (ADEQ) Solid Waste Fee rulemaking process. While observing the Stakeholder meetings on May 30, 2024, June 20, 2024, and July 18, 2024, we were informed by ADEQ of their intent to address a current budget shortfall of approximately two million dollars to operate the solid waste program. The City of Glendale shares the same budgetary constraints caused by the Arizona Legislature and we recognize the important role of ADEQ to ensure public health and protection of the environment and the need to properly fund those services. However, we have concerns with the proposed rule for the following reasons:

1. All proposed fee increases are significant, and many are well over 100% increases compared to the current fees. These substantial fee increases will impact not only landfill and transfer station operators but also the City of Glendale's residents and local businesses that will experience increased direct and pass-through costs for proper collection and disposal of their solid waste. This is a significant challenge for the Glendale City Council and our community as service fee increases are politically sensitive, requiring advanced notification to residents and City Council approval.

2. Another concern that we do not believe was mentioned is other municipal use of the City of Glendale's landfill. Currently, Glendale has Intergovernmental Agreements (IGAs) with the cities of Peoria, Goodyear and Avondale. Any increase in ADEQ fees are not reflected in current IGAs and will be absorbed by Glendale directly. Thus, once again, placing a financial burden on Glendale rate and taxpayers.

3. Any cost increase absorbed by the City that was not accounted for in IGAs or in our City budget will create additional constraints on the budget that has already been approved by the City Council, all while we are currently facing significant impacts to our budget from the State's reduction of the flat tax and repeal of the rental tax.

We understand that the current fees assessed by ADEQ may not be adequate to fund the department and the City of Glendale welcomes further discussions on ADEQ's desire to implement sustainable funding practices. We ask that ADEQ pause any plans to implement fee increases until July 1, 2025, to align with the Fiscal Year timeline and provide as much notification as possible to stakeholders for their budget planning. For these reasons, the City of Glendale respectfully requests ADEQ to pause the rulemaking process and adjust its approach to reduce the impacts on cities.

Respectfully,

Jamsheed Mehta
Assistant City Manager

cc: Ryan Lee
Director, Intergovernmental Programs

5850 W. Glendale Ave. 623.930.2870
Glendale, AZ 85301

wasterecycling.org

National Waste & Recycling Association℠
Collect. Recycle. Innovate.

1550 Crystal Drive
Suite 804
Arlington, VA 22202
T 202.244.4700
F 202.966.4818

September 20, 2024

Arizona Department of Environmental Quality
Waste Programs Division, Solid Waste Unit
Attn: Julie Riemenschneider, Director Waste Programs Division
wasterulemaking@azdeq.gov

RE: NWRA Arizona Chapter – Solid Waste Program Fees Update Feedback

Dear Ms. Riemenschneider,

I submit this letter to you today on behalf of the National Waste & Recycling Association's (NWRA) Arizona Chapter. We represent private solid waste companies offering waste collection, recycling, and disposal services to communities, local governments, commercial and residential customers throughout the state of Arizona. Since NWRA members are closely affected by HB 2367 and the solid waste fee rule changes, after careful evaluation, the chapter would appreciate consideration of the following comments:

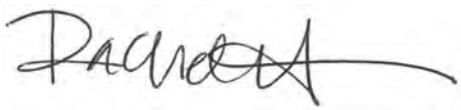
- **Timeline**
  - We join in the comments of other agencies requesting a start date at the beginning of the next fiscal year with an implementation date of July 1, 2025.
  - The new rule should include a requirement for review of all fees every 5 years to ensure revenues are not exceeding program costs and to evaluate the necessity of continued CPI increases.
  - Update agency calendar reflecting the adoption of the new rule.

- **Funding**
  - Formalize rules for the Recycling Grant Program, ensuring ongoing funding and support for important waste diversion programs. This grant demonstrates the state's commitment to sustainability through equitable funding for recycling and waste reduction efforts.
  - Is there a proforma report projecting total revenues in this program and as a result of these increases and how they relate to program costs ensuring that the program is not over funded?

- **General**
  - Application of fees, if any, to closed landfills to ensure that post-closure plans are accurate. If none are applied, written statement in the Rules regarding absence of fee assessment to closed landfills.

The NWRA Arizona Chapter and its members appreciate the opportunity to comment on the proposed changes and would be happy to clarify any of the above-listed comments. We also request feedback on when/if submitted comments are available for review and if they will be available through the ADEQ website. Additionally, we would welcome continued engagement throughout this process, as we fully understand the impacts the fee and rule changes will have on collection and processing services throughout Arizona.

Sincerely,



Rachel Hering, NWRA
Vice President of Chapter Relations
rhering@wasterecycling.org

mesa·az
SOLID WASTE
mesaaz.gov

MS-4499
PO Box 1466
Mesa, AZ 85211-1466

September 18, 2024

Arizona Department of Environmental Quality
Waste Programs Division, Solid Waste
Attn: Matt Rippentrop
1110 W. Washington St
Phoenix, AZ 85007

Dear Mr. Rippentrop,

The City of Mesa has been participating in the Solid Waste Fee Rulemaking process and has reviewed the Notice of Proposed Rulemaking to update and establish solid waste fees throughout Arizona Administrative Code (A.A.C.) Title 18, Chapter 13, Solid Waste Management. As presented during the meetings, and in Notice of Proposed Rulemaking the fee rule is being designed to add new fees and increase existing fees for the purpose of generating revenue to cover the Arizona Department of Environmental Quality's (ADEQ) costs for administering the solid waste program. As a municipality, Mesa recognizes we have a shared value of protecting public health and the environment, while ensuring a clean and welcoming community for our residents and visitors. The City of Mesa offers the following comments on the proposed rule:

1. The new fees are proposed to be effective January of 2025, but these fees will not be billed until after July 1, 2025. ADEQ is proposing this billing delay in response to comments about aligning new fees with fiscal year calendars of impacted organizations. This approach will, however, require a substantially higher impact in fiscal year 2025, whereby expenses from both fiscal years will be assessed. The City of Mesa recommends the new fees be implemented starting July 1, 2025, rather than requiring these retroactive payments. This is particularly important for the increase to solid waste landfill disposal fees. The City of Mesa does appreciate the effort by ADEQ to better align the timing of these fees.

2. The Rulemaking proposes fee increases that are substantial. ADEQ estimates a total of $12 million in additional annual revenue. $6.7 million is revue generated from the sale of new tires in support of the waste tire program. The Notice of Proposed Rulemaking indicates that $2.4 million in new annual revenue will be placed into the Solid Waste Fee Fund and $3.5 million in new annual revenue will be placed in the Recycling Fund. Recognizing that annual tonnage fluctuates, total revenues deposited in the Recycling Fund are expected to exceed $6 million annually. That is 6 times higher than the $1 million in recycling program grants recently administered. Does ADEQ intend to increase the recycling grant program to award this larger sum of money, or will these funds be used for other operating expenses?

3. The Rulemaking proposes a perpetual consumer price index (CPI) increase each year after implementation. The City of Mesa opposes the inclusion of an ongoing CPI adjustment. As ADEQ experiences cost increases to provide services, it should retain the obligation to present these in future proposed rulemaking to ensure full stakeholder engagement and transparency. This is of

particular concern as it related to the solid waste disposal fee, which is deposited into the Recycling Fund. CPI adjustments to this fee do not correlate with increased expenses, rather it correlates with how large of a recycling grant program ADEQ intends to administer. Furthermore, the CPI, which includes an analysis of things such as housing, food, and energy prices – does not appear to be a reasonable approximation of ADEQ costs.

The City of Mesa appreciates the opportunity to participate in this process and share our concerns with you. If you have any additional questions or concerns, please do not hesitate to contact me via email at sheri.collins@mesaaz.gov or by telephone at 480-644-3144.

Respectfully,

Sheri Collins

Sheri Collins

City of Mesa Solid Waste Director

City of Phoenix

September 17, 2024

Mrs. Karen Peters
Deputy Director
Arizona Department of Environmental Quality
1110 West Washington Street, Suite 160
Phoenix, Arizona 85007

Dear Mrs. Peters,

On July 23, 2024, the City of Phoenix (Phoenix) submitted a letter to you regarding the concerns verbally communicated by Phoenix and other stakeholders during ADEQ's July 18 stakeholder meeting on the proposed solid waste fee increases. Despite the comments shared during the stakeholder meeting and subsequent letter, ADEQ moved forward with the formal rulemaking. Like the stakeholder meetings on May 30, June 20, and July 18, the Notice of Proposed Rulemaking posted on August 16, 2024, contains new information that stakeholders must evaluate and respond to within a quick turnaround. Additionally, this is the first-time stakeholders can review the complete proposed rule language. Although Phoenix recognizes the important role of ADEQ in ensuring public health and protection of the environment and the need to properly fund those services, Phoenix urges ADEQ to resolve the following issues with the proposed rule before it is finalized and becomes effective.

Implementation Schedule

In the proposed rule, ADEQ acknowledged stakeholder concerns on the proposed timeline to implement the new fees beginning January 1, 2025, which was communicated during the stakeholder meetings. To address this, ADEQ is proposing that the new fees be implemented on January 1, 2025, but would provide a one-time adjustment to the timing of invoicing with some of the new fees until July 1, 2025. After this one-time adjustment, the invoices would revert back to calendar year billing cycles with the implementation of the proposed perpetual CPI increases beginning January 1, 2026. Given the ongoing budget impact on cities and counties with annual CPI increases, Phoenix urges ADEQ to make the Fiscal Year billing cycle permanent with invoicing after July 1, 2025.

Perpetual CPI Increase

Despite stakeholder concerns communicated during the July 18 stakeholder meeting, the perpetual annual CPI increases on the fees after the initial proposed increases remain in the proposed rule. Furthermore, the rule allows for the CPI adjustments to fluctuate significantly based on the inflation and deflation market conditions, making it difficult for cities, counties, and ADEQ to plan our budgets accordingly. Additionally, there are no transparency requirements for ADEQ to provide ongoing justification to stakeholders for the need to continue CPI increases. To address these issues, Phoenix urges ADEQ to cap the CPI to a maximum of five years and a maximum of 5% per year. During each year the annual CPI is in place, Phoenix recommends annual financial reporting by ADEQ, including the annual revenues and expenditures in the solid waste and recycling funds and reassurances that the revenues only support the solid waste and recycling programs and no other state budget shortfalls. Before an extension of a CPI is considered beyond five years, a formal rulemaking process including stakeholder comment and formal justification for the need for a continued CPI is also requested. This recommended approach also aligns with the processes and transparency municipal and county solid waste utilities must follow with the reporting to their elected officials and residents.

Additional Clarifications Needed on Proposed Fee Increases

In addition to the transparency and reporting requested with the proposed CPI increases, additional clarification is also requested in the current notice of proposed rulemaking to better understand ADEQ's financial need for the fee increases. ADEQ communicates that the revenue from the recycling fund has been used to cover the ongoing budget shortfall in the solid waste fund and on page 2584, ADEQ states, "Currently regulatory costs across all solid waste programs for ADEQ are estimated to total $3.5M per year; however, current fees generated are estimated at roughly $500,000." Please clarify how much of the current generated fee revenue is in the recycling fund versus the solid waste fund and please provide the estimated revenue by fund with the proposed fee increases. Since ARS 49-836 stipulates the fee revenue that must be deposited in the recycle fund, this breakdown will help stakeholders compare the current and projected conditions of both the recycle and solid waste funds. Also, please clarify how the total contribution of the fee on the sale of new tires into the solid waste fee fund of $665,000 was derived. Having complete transparency of the current and projected solid waste and recycle funds is essential for stakeholders to understand how our current and projected fees will be used.

Landfills in Post-Closure Care

In the fee chart on page 2579, landfills in post-closure care are listed as having no current fee and a proposed annual fee of $3,500. This aligns with the statement on page 2584 "Those facilities and entities that would be subject to a new fee for the first time include landfills that enter into post-closure care". However, this is inconsistent with the strike-through language in R18-13-2103 on page 2598 that states the annual landfill registration is $1,250. Please provide clarification if the closed landfill fees are new or increases on existing fees.

Proposed Initial Fee Increases

Phoenix's budget is currently being significantly impacted by the State's reduction of the flat tax and the $90 million impact from the repeal of the rental tax. ADEQ's proposed fee increases are yet another impact on our budget imposed by the State. All of the proposed fee increases are significant, and many are well over 100% increases compared to the current fees. These fee increases combined will result in an estimated increase of 154% to Phoenix compared to the current solid waste fees we pay assuming a 5% CPI increase beginning FY25-26. These substantial fee increases will impact not only landfill and transfer station operators but also the cities, towns, counties, residents, local businesses, and customers that will experience increased direct and pass-through costs for proper collection and disposal of their solid waste. This can present a challenge for cities and towns as service fee increases are politically sensitive, requiring advanced notification to residents and City Council approval.

Given these impacts, Phoenix urges ADEQ to reconsider the approach with the proposed rule and adjust the implementation schedule, limit the subsequent CPI increases, provide ongoing and thorough transparency and justification for the fee increases, and provide assurances that the revenue from the fees will only be used for solid waste and recycling programs and never used to cover other State budget shortfalls. Phoenix opposes this rule as it is currently proposed and urges ADEQ to incorporate the recommendations outlined in this letter.

Respectfully,

Felipe Moreno

Felipe Moreno
Public Works Director

City of Goodyear
Public Works Department

July 25, 2024

Karen Peters
Director
Arizona Department of Environmental Quality
1110 W. Washington St., Suite 160
Phoenix, AZ 85007

Dear Director Peters,

Thank you for the opportunity to participate in the Arizona Department of Environmental Quality (ADEQ) Solid Waste Fee rulemaking process. During the Stakeholder meetings on May 30, 2024, June 20, 2024, and July 18, 2024, ADEQ announced that the intent of the current rule-making process is to address a current budget shortfall of approximately two million dollars to operate the solid waste program.

Although City of Goodyear recognizes the important role of ADEQ to ensure public health and protection of the environment and the need to properly fund those services, we have concerns with the proposed rule for the following reasons.

1. All proposed fee increases are significant, and many are well over 100% increases compared to the current fees.
    - These substantial fee increases will impact not only landfill and transfer station operators but also the cities, towns, counties, residents, local businesses, and customers that will experience increased direct and pass-through costs for proper collection and disposal of their solid waste.
    - This is a significant challenge for cities and towns as service fee increases are politically sensitive, requiring advanced notification to residents and City Council approval.

2. The City of Goodyear is currently facing significant impacts to our budget from the State's reduction of the flat tax and repeal of the rental tax.

3. The City of Goodyear would appreciate assurances that the fees will support the solid waste fund and recycling grants and not be swept to cover other state budget shortfalls.

4. The City of Goodyear opposes the proposed perpetual inflationary (CPI) adjustments to the fees and recommends more frequent public rule-making processes to adjust future fees.

5. The City of Goodyear recommends that ADEQ update the implementation timeline to be no earlier than July 1, 2025.
    - This would help to align any fee increases with the City's fiscal year timeline and provide as much notification as possible to stakeholders for appropriate budget planning.

For these reasons, the City of Goodyear urges ADEQ to pause the rulemaking process and adjust its approach to reduce the impacts on cities. If you have any questions or require additional information, please contact me at my cell phone number (623) 687-8402 or email address sumeet.mohan@goodyearaz.gov.

Respectfully,

Sumeet Mohan, P.E.
Director of Public Works

c: Kini Knudson, P.E., Deputy City Manager
Justin Fair, Deputy City Manager
Ginna Carico, Government Relations Manager

City of Tempe
Public Works Department
Field Operations Division
PO Box 5002
Tempe, AZ 85280

September 20, 2024

Karen Peters
Chief Executive Officer
Arizona Department of Environmental Quality
1110 W. Washington St., Suite 160
Phoenix, AZ 85007

Dear Mrs. Peters,

Thank you for the opportunity to participate in the Arizona Department of Environmental Quality (ADEQ) Solid Waste Fee rulemaking process. During the Stakeholder meetings on May 30, 2024, June 20, 2024, and July 18, 2024, ADEQ announced that the intent of the current rule-making process is to address a current budget shortfall of approximately two million dollars to operate the solid waste program. Although the City of Tempe recognizes the important role of ADEQ to ensure public health and protection of the environment and the need to properly fund those services, we have concerns with the proposed rule for the following reasons.

1. All proposed fee increases are significant, and many are well over 100% increases compared to the current fees. These substantial fee increases will impact not only landfill and transfer station operators but also the cities, towns, counties, residents, local businesses, and customers that will experience increased direct and pass-through costs for proper collection and disposal of their solid waste. This is a significant challenge for cities and towns as service fee increases are politically sensitive, requiring advanced notification to residents and City Council approval.
2. The City of Tempe is currently facing significant impacts to our budget from the State's reduction of the flat tax and repeal of the rental tax.
3. The City of Tempe would appreciate assurances that the fees will support the solid waste fund and recycling grants and not be swept to cover other state budget shortfalls.
4. The City of Tempe opposes the proposed perpetual CPI adjustments to the fees and recommends more frequent public rule-making processes to adjust future fees.
5. The City of Tempe recommends that ADEQ update the implementation timeline for July 1, 2025 to align with the Fiscal Year timeline and provide as much notification as possible to stakeholders for their budget planning.

For these reasons, the City of Tempe urges ADEQ to pause the rulemaking process and adjust its approach to reduce the impacts on cities.

Respectfully,

David Tavares
Deputy Public Works Director

CITY OF TUCSON
ENVIRONMENTAL & GENERAL SERVICES

September 19, 2024

Matt Rippentrop
Program Manager, Solid Waste Fees Rulemaking Process
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

Dear Mrs. Peters,

On behalf of the City of Tucson, enclosed please find our input and feedback on the 2024 Arizona Department of Environmental Quality (ADEQ) Solid Waste Fee rulemaking process. Similarly to your agency, we are also faced with budget shortfalls that have significant impacts on our solid waste operations and services.

The City of Tucson recognizes the role of ADEQ in protecting public health and the environment and the need to have the adequate resources to provide these services.

We respectfully submit for your review and consideration the following concerns:

1. The proposed fees are either new or significant in nature ranging in increases from 33% all the way up to 2,567% as compared to the current fees. These substantial fee increases will impact not only landfill, residents/rate payers, local businesses, and customers that will experience increased direct and pass-through costs for proper collection and disposal of their solid waste. This is a significant challenge for the City of Tucson as service fee increases require advanced notification to residents and City Council approval.
2. The City of Tucson is and will continue to be significantly financially impacted by the State's reduction of the flat tax and repeal of the rental tax.
3. The City of Tucson understand the needs to adjust fees to cover the cost of service but also wants to ensure that these proposed fees be used to support the solid waste fund and recycling grants and not be used to cover other state general fund financial obligations.
4. The City of Tucson recommends that fees be reviewed and adjusted periodically using a cost-of-service model through a public rule-making processes and not by instituting a perpetual CPI adjustment.
5. The City of Tucson recommends that ADEQ update the implementation timeline aligns with most Arizona cities and towns fiscal year budgeting process.
6. The City of Tucson recommends that ADEQ consider the implementation of these proposed fees in phases, not only from the perspective of which fees need to be

adjusted first and other that may be implemented later, but also from a fee implementation schedule over a period of 3-5 years.

We thank you in advance for considering our concerns.

Respectfully Submitted,

Carlos A. De La Torre, P.E.
Director

c: Timothy M. Thomure, P.E. ENV SP, City Manager
Elizabeth Morales, Assistant City Manager
Kristina Swallow, Assistant City Manager
Andres Cano, Intergovernmental Relations Manager
Julie Riemenshneider, ADEQ, Solid Waste Division Director
Krista Osterber, ADEQ, Legislative Liasion

County Supervisors Association of Arizona

September 20, 2024

Karen Peters
Cabinet Executive Officer
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Cabinet Executive Officer Peters,

The County Supervisors Association has appreciated its inclusion in the Department's stakeholder process relating to a potential increase in solid waste fees. Further, the Association – representing counties whose supervisors have long expressed concerns with unfunded statutory mandates – well understands the Department's need for revenues sufficient to fund mandated functions.

As counties play various roles in waste processes, the impacts of the proposed changes to rule on counties are multifaceted:

- The Association has received feedback from counties indicating support for additional funding for waste tire collection and disposal. Increasing the $2.00 cap on the waste tire fees – which produces revenues distributed to counties and the Department via a statutory mechanism - will further fund county obligations to collect and contract for the disposal of waste tires.
- Counties have noted that some of the projected fee increases, such as those for post-closure landfills, transfer stations, and tire yards, could cost county taxpayers tens of thousands of dollars and increase costs to local businesses. Further, counties have expressed concern that increased costs could incentivize illegal dumping.
- Finally, as the contemplated changes to fees are scheduled to become effective in January – and the county fiscal year runs from July 1st of one year to June 30th of the next - counties would not have adequate time to budget for these fees.

Taking the need to fund these services together with existing county budget processes, as well as the intended usage of fees as cost-recovery, the Association would respectfully request your consideration of the following:

- That notice of fee increases be sufficient to allow stakeholders to address costs in future budgets, and that fee increases align with existing budget timelines.
- That proposed increases are justified with cost estimates by the Department on an annual basis.

Thank you, again, for including our Association in your stakeholder process. We look forward to working with the Department on this, and other, issues.

Sincerely and respectfully,

Jacob Emnett
Legislative Director
County Supervisors Association

1905 W. Washington St. · Suite 100 · Phoenix, Arizona 85009
(602) 252.5521 · Fax (602) 253.3227
www.countysupervisors.org

CITY OF CASA GRANDE | STRONGER UNITED

Public Works Department 3181 N. Lear Avenue, Casa Grande, Arizona 85122
www.CasaGrandeAZ.Gov

September 19, 2024

Matt Rippentrop
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Dear Mr. Rippentrop,

Thank you for the opportunity to participate in the Arizona Department of Environmental Quality (ADEQ) Solid Waste Fee rulemaking process. During the Stakeholder meetings on May 30, 2024, June 20, 2024, and July 18, 2024, ADEQ announced that the intent of the current rule-making process is to address a current budget shortfall of approximately two million dollars to operate the solid waste program. Although the City of Casa Grande recognizes the important role of ADEQ to ensure public health and protection of the environment and the need to properly fund those services, we have concerns with the proposed rule for the following reasons.

1. All proposed fee increases are significant, and many are well over 100% increases compared to the current fees. These substantial fee increases will impact not only landfill and transfer station operators but also the cities, towns, counties, residents, local businesses, and customers that will experience increased direct and pass-through costs for proper collection and disposal of their solid waste. This is a significant challenge for cities and towns as service fee increases are politically sensitive, requiring advanced notification to residents and City Council approval.
2. The City of Casa Grande would appreciate assurances that the fees will support the solid waste fund and recycling grants and not be swept to cover other state budget shortfalls.
3. The City of Casa Grande opposes the proposed perpetual CPI adjustments to the fees and recommends more frequent public rule-making processes to adjust future fees.
4. The City of Casa Grande recommends that ADEQ update the implementation timeline for July 1, 2025, to align with the Fiscal Year timeline and provide as much notification as possible to stakeholders for their budget planning.

For these reasons, the City of Casa Grande urges ADEQ to pause the rulemaking process and adjust its approach to reduce the impacts on cities.

Respectfully,

Ronald Rouse
Sanitation Superintendent
City of Casa Grande

Paul R. David - Graham Coiunty Board Of Supervisors Dist. 1

Graham County continues to be concerned with ADEQ's proposed solid waste fees, the accelerated implementation schedule as well as the consequences to public taxpayers. Our comments follow:

1. While HB2367 fully authorizes the ADEQ to unilaterally set fees without review by the legislature or the JLBC the rationale for raising both new permit, permit renewal and oversight across the board does not appear to be based on the cost to ADEQ of each activity but on the need to raise operational revenue. This "across the board" method while effective is not good practice.

2. This emergency legislation enacts fees on July 1, 2025 instead of July 2025. The timing imposes fees that Graham County and other government agencies haven't budgeted for.

3. By raising the per ton disposal cost of solid waste as well as permit fees for the haulers these costs will be borne ultimately by consumers. Our county as well as other rural counties and municipalities are already struggling with "wildcat dumping" to avoid landfill costs. This incremental increase will exacerbate the economics that create this problem.

4. Three of the existing proposed cost increases are more than 1000% with five at 100% or more. Of course fees on previously no cost permit activities cannot be quantified with percentages. I would request that ADEQ increase their costs incrementally over a period of years rather than immediately. This will ease the "sticker shock" by permittees and consumers. The timing of these sudden increases couldn't be worse as it occurs during a period of national, regional and local inflation.

Respectfully -Paul R. David

League of Arizona Cities and Towns
1820 W. Washington • Phoenix, AZ 85007 • Phone: (602) 258-5786 • Fax: (602) 253-3874
Email: league@azleague.org · Web site: www.azleague.org

September 16, 2024

Karen Peters
Deputy Director
Arizona Department of Environmental Quality
1110 W. Washington St., Suite 160
Phoenix, AZ 85007

Karen,

On behalf of the League of Arizona Cities and Towns, I write to reiterate the concerns raised by our membership regarding the proposed solid waste rulemaking and increases to associated fees.

We understand and value the role that the Department of Environmental Quality has to protect the environment for the citizens of Arizona, and cities and towns often partner with the agency to successfully carry out its mission. We also understand sustainable funding and resources are needed to achieve your mission. However, we hope you will consider the extraordinary financial circumstances cities and towns are experiencing and understand the challenges they will face in absorbing in their limited budgets the large increases in fees proposed by the agency. Many of the proposed fees will increase by 100%, which not only will strain municipal budgets, but will impact the businesses and residents we serve. Additionally, adjusting fee increases to the Consumer Price Index will worsen the budgetary impact on municipalities and will make planning for future budgetary needs increasingly challenging.

Some of our impacted members offered suggestions in their public comments to mitigate these challenges. We feel that if these suggestions are included in the final rules, your agency will still achieve the goal of aligning fees to the actual costs to carry out its mission. This includes, among others, reducing the initial proposed fees, capping the CPI adjustments at five years with a 5% limitation, and aligning the invoicing cycles with the fiscal year.

We urge you to examine and incorporate these suggestions into the final rule so that all impacted stakeholders can successfully implement it without unintended consequences and negative budgetary impacts.

Sincerely,

C. Thomas Belshe

Tom Belshe
Executive Director

Gmail

Waste Rule Making - AZDEQ <wasterulemaking@azdeq.gov>

City of Scottsdale Public Hearing Comments - ADEQ New Rules and Fees

1 message

Bennett, Dave <DBennett@scottsdaleaz.gov> Thu, Sep 19, 2024 at 8:51 PM
To: "wasterulemaking@azdeq.gov" <wasterulemaking@azdeq.gov>

September 19, 2024

Karen Peters

Chief Executive Officer

Arizona Department of Environmental Quality

1110 W. Washington St., Suite 160

Phoenix, AZ 85007

Dear Mrs. Peters,

Thank you again for the opportunity to participate in the Arizona Department of Environmental Quality (ADEQ) Solid Waste Fee rulemaking process. Listed below are the concerns, requests, and questions I raised at today's public hearing and past stakeholder meetings on behalf of the 85,000 plus rate payers I report to:

1. The City of Scottsdale is currently facing significant impacts to our budget from the State's reduction of the flat tax and repeal of the rental tax.
2. The City of Scottsdale requests that the tonnage disposal fee supports the solid waste fund and recycling grants and not be swept to cover other state budget shortfalls.
3. The City of Scottsdale opposes the proposed perpetual CPI adjustments to the fees and recommends more frequent public rule-making processes to adjust future fees.
4. The City of Scottsdale requests that ADEQ implement the proposed rate increases on July 1, 2025. This will better align with our Fiscal Year 26 timeline and budget planning processes.
5. If ADEQ decides to move forward with the annual CPI adjustment, the City of Scottsdale asks that ADEQ provide the CPI adjustment percentage on or before January 1st, and the rate adjustments taking effect on July 1 of each year going forward.
6. Did the Solid Waste Management program FY 24/25 budget include revenue from the January 1 rate increases? If yes, what is the total amount of revenue the program is forecasted to receive?
7. If the goal of the Solid Waste Management program is to be a "fully self-funded program", why did they choose the method of an annual CPI adjustment to recover costs, rather than review the previous fiscal years actuals (revenue and expenses), and then seek the appropriate rate increases needed?
8. What will happen if this program is under or over recovering its costs through the annual CPI adjustment?

Respectfully,

Dave Bennett

Director of Solid Waste Services

City of Scottsdale – Public Works

T: 480.312.5607 | C: 480.370.0928 | F: 480.312.8115

Mailing Address: 9191 E San Salvador Drive. Scottsdale, AZ. 85258

Tank's Green Stuff

I formally protest the increase in fees for composting operations and construction waste landfills. Small composting operations are already struggling with the soaring cost of operating their facilities. Equipment, labor, and energy costs have skyrocketed over the past 4 years due to covid and breaks in the supply chain. Labor costs. Both construction waste recycling and composting facilities are very labor intensive and are already and having a very difficult time making a profit. Commodity prices for plastics, metals, and recycled wood waste have plummeted. To increase the annual fees is an insult to injury. If anything the fees should reduced in order to help these businesses recover from covid and the lack of available labor. Recycling/composting operations need more help from ADEQ not more financial pain.

gilbert

Shaping a new tomorrow, today.

Matt Rippentrop
Arizona Department of Environmental Quality
1110 W. Washington St., Suite 160
Phoenix, AZ 85007

09/20/2024

Dear Mr Rippentrop,

Thank you for the opportunity to participate in the Arizona Department of Environmental Quality (ADEQ) Solid Waste Fee rulemaking process. During the Stakeholder meetings on May 30, 2024, June 20, 2024, and July 18, 2024, ADEQ announced that the intent of the current rule-making process is to address a current budget shortfall of approximately two million dollars to operate the solid waste program. Although the Town of Gilbert recognizes the important role of ADEQ to ensure public health and protection of the environment and the need to properly fund those services, we have concerns with the proposed rule for the following reasons.

1. All proposed fee increases are significant, and many are well over 100% increases compared to the current fees. These substantial fee increases will impact not only landfill and transfer station operators but also the cities, towns, counties, residents, local businesses, and customers that will experience increased direct and pass-through costs for proper collection and disposal of their solid waste. This is a significant challenge for cities and towns as service fee increases are politically sensitive, requiring advanced notification to residents and City Council approval.
2. The Town of Gilbert is currently facing significant impacts to our budget from the State's reduction of the flat tax and repeal of the rental tax.
3. The Town of Gilbert would appreciate assurances that the fees will support the solid waste fund and recycling grants and not be swept to cover other state budget shortfalls.
4. The Town of Gilbert opposes the proposed perpetual CPI adjustments to the fees and recommends more frequent public rule-making processes to adjust future fees.
    a. Should the CPI move to implementation, the Town of Gilbert proposes ADEQ share the regional CPI by January 1 of each year, with an effective date the following July 1 of each year.
5. The Town of Gilbert recommends that ADEQ update the implementation timeline for July 1, 2025, to align with the Fiscal Year timeline and provide as much notification as possible to stakeholders for their budget planning.

For these reasons, the Town of Gilbert urges ADEQ to pause the rulemaking process and adjust its approach to reduce the impacts on cities.

Respectfully,

4760 S. Greenfield Rd
Gilbert, AZ 85297

(480) 503-6000
Paul.Montes@gilbertaz.gov
Jessica.Marlow@gilbertaz.gov

gilbertaz.gov

Shaping a new tomorrow, today.

4760 S. Greenfield Rd
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0:05
Hello everyone, and thank you for attending today's public hearing for Solid Waste Fees Rulemaking.

0:11
My name is Angela Kane.

0:12
I'm a Community Outreach Coordinator here at ADEQ.

0:15
We're going to give it just a couple of minutes to make sure everybody can have time to get into the hearing.

0:26
And if you're having any troubles either seeing what's up on the screen, the presentation slides, or hearing the speaker, we recommend that you log out, power cycle your device, and log back in.

1:12
All right, looks like we still have some people joining us, so we're going to give it just one more minute.

1:43
All right, looks like we still have a few more coming in, but it is 2.32, so I am actually going to hand this over to Mark Lewandowski.

1:58
The recording is on, so good afternoon, everyone, and welcome to this hearing, also called an proceeding on ADEQ's proposed rule for solid waste fees to update solid waste fees. I'm Mark Lewandowski.

2:14
I've been appointed by the director to preside at this hearing as I have been from time to time.

2:20
The time is 2.32 Arizona time.

2:27
The hearing is being held pursuant to Arizona Revised Statute, Section 41-1023, and it's being held virtually only through a go-to webinar, a software application, and as I mentioned, it's being recorded.

2:45
This hearing was publicized in the August 16, 2024, Arizona Administrative Register separately on the ADEQ website.

2:56
ADEQ also held three public stakeholder meetings to discuss solid waste fees and outlined the plans for this rule.

3:05
There's a number of ADEQ employees that are attending this and will be able to answer questions as we get into that part of this oral proceeding.

3:17
Samantha Robert is manager for waste programs, hazardous and solid waste section.

3:24
Robin Thomas, senior engineer. Terry Bayer, the senior scientist in that section.

3:32
Angela Kane, our community outreach coordinator.

3:36
Matt Rippentrop is one of the waste program attorneys who is the main contact for this rule and who helps us with the administrative rule process.

3:45
And Also here is Julie Reimann-Schneider, who is the Director of the Waste Programs Division.

3:52
Under that statutory section that I mentioned, 41.1023, the purposes of this oral proceeding are to provide the public an opportunity to hear about the substance of the proposed solid waste fees rule, to ask any questions about the proposed rule, and to present oral argument, data and views regarding the proposed rule in the form of oral comments on the records. So how do you do that?

4:22
Go-to webinar is not my specialty at all so I have asked outreach coordinator Angela Kane to explain how you can do that and also to help us out as we go through this hearing.

4:35
So Angela you can show the slide and explain. All right thank you Mark.

4:43
So if you're not sure how to use the control panel we're going to go through that really quickly.

4:47
Your control panel should be located on the right hand side of your screen.

4:51
If you're not seeing it click on this little orange or red arrow and that should either open or close your control panel.

5:01
Please stay muted while in this meeting and while speaking.

5:05
And if you would like to put questions in the question tool, feel free to do that as they

come to you.

5:11
There will be instructions that follow on when to do that. And to note again, this hearing is being recorded.

5:19
And also you're going to need to make sure you know where that little button is to raise your hand. It is also located here on the control panel.

5:28
So, okay, with that I'm going to hand this back over to Mark.

5:45
Oh, Mark, we don't have your audio.

5:56
I'm learning how to use that control panel on the side of the screen as well.

6:01
You can see the agenda on your screen.

6:04
This hearing is organized.

6:05
Two ways to get your comment on the record.

6:09
And you can't really see that from this screen, but I want to emphasize there's two ways to get your comment on the record.

6:15
Number one is orally today.

6:16
and number two is in writing before 5 p.m. tomorrow.

6:21
So no matter what happens today you always have an email tomorrow.

6:26
So today we're going to have questions regarding the proposed rule before we have the opportunity to comment on the record and before either of those there's going to be a presentation of the proposed rule which may help you with your questions.

6:44
So orally or written comments or email.

6:49
Just to note how to make sure your oral comment today is on the records, I'm going to very plainly announce when that time for oral comments on the record starts.

7:02

After the presentation of the proposed rule, there'll be that question and answer period.

7:07
Many things that happen in the question and answer period are not easily identifiable as a formal comment on the rule.

7:13
so that's one of the reasons we have this separate part of the hearing.

7:19
So even if you think you've made a comment in the questions and answers sheet which it's suggested, you make sure you include that in your oral comment or at least in writing.

7:29
Also when you make an oral comment today, please try to state your name and who you're with at the start.

7:38
ADEQ is required by law to answer or to consider all comments and they will summarize their responses to these comments both today and in writing in the notice of final rulemaking.

7:51
Let's see it looks like we have 61 people here attending if I'm reading that right.

7:58
You need to have registered for this hearing in order to speak.

8:02
Those of you who attend by phone or have listened only, I'm not sure if we have any attending by through 5 p.m.

8:11
tomorrow, you'll be able to email your comments to waste rulemaking at EZDEQ.gov or to the legal contact for this rulemaking, Matt Ripentrop. And can we go to the next slide?

8:31
So two of these things, the first part has already happened, so we're fairly sure about those dates, but we're expecting to get the final rule drafted before maybe the 22nd of next month, sometime in October, when there's a deadline to get it to GERC.

8:54
We expect to try to get it to GERC at the December meeting.

8:58
The December meeting has a late November study session.

9:01
Those of you who are familiar with GERC, GERC has two meetings to consider all rules.

9:07
And if it's proved at GERC, it'll be effective as an Arizona rule because we're acting for

an immediate effective date.

9:15
It will be effective somewhere around December 5th.

9:22
That's an approximate date obviously, but I wanted to make sure everybody knew that these are all approximate dates.

9:30
And so now we're going to enter the question and answer period of this hearing. And Terry will tell us about the proposed rule and maybe work the slides as well.

9:44
Terry Bayer. Thank you, Mark. Okay. Is my audio coming through okay? Thank you, sir.

9:55
So again, thank you, Mark.

9:57
I also want to thank all of those that have attended today, as well as those that have followed this rulemaking thus far.

10:03
Following several rounds of stakeholder engagement, I The Solid Waste Program has a lot of mandates for protection of the public and the environment.

10:12
In 2012, when the department changed to a fee-based model for funding rather than that of the previous decades, it engaged stakeholders on setting those fees in 2012.

10:23
Since then, the department has seen that those fees were not sufficient for sustaining the program.

10:28
This was attributed to below-market fees set in 2012, lack of legislative authority to some fees for our mandates, as well as inflation in the tune of 48.5% over the last 12 years.

10:42
So this rulemaking was to hopefully address each of those aspects that we've presented on that have led to DEQ's developed new rule as published in the NPRM. Next slide.

10:58
So some key rule elements that we do want to make sure that folks understand that was in the NPRM is the first bullet here.

11:06
If you're a new facility that seeks a license or a registration, such as either accepted chawler or transfer station as an example, after the rule takes effect, the new facility rate would apply at the time of the application.

11:21

So it's key for folks to understand that this has an immediate effectiveness, which is important for that timeline that Mark just laid out.

11:32
Again, this was an element per HB 2367 due to the needs of the program.

11:39
So moving into the next bullet there for calendar year 2025, based on feedback that we had heard from stakeholders thus far, while the rate will be effective immediately, we've decided to split the billing into two separate intervals.

11:56
The rate that you have paid to this rulemaking or prior to this rulemaking will be the same rate that when you renew your registration.

12:05
The increased portion of the rate would not be billed until July of 2025 to coincide with the new state fiscal year.

12:13
The final bullet there is that all tonnage rates subject to the increase will take effect for the new calendar year 2025, but those invoices would be delayed to go inside with the state fiscal year for 2025, July of 2025.

12:28
So just to make note for all those that are attending today, a good example would be like Q2 invoicing.

12:36
Those tonnage rates end at the end of June, and so typically those happen thereafter.

12:43
So Q2 invoicing would approximately about two months later, so you would see that invoice sometime due September. Next slide. So these are the rates that were published in the NPRM.

13:00
So I won't go over each individual rate, but this definitely offers a high-level view of the current fees that were in place.

13:10
You can see the ones that obviously have zeros are new fees from the new legislative authority, and then the proposed annual is what is in the NPRM.

13:20
You can see that there is a note to the applicable.

13:24
So, for example, the initial fee is for a new operator or facility that is coming in.

13:31
In this example, let's say you're a used oil processor, you would have an initial rate which

is slightly higher than the annual rate for that one-time setup.

13:43
There are asterisks on this slide to indicate to just that aspect of those that would have the initial fee application.

13:51
The other asterisk, obviously, is for tire subject plan review, which currently is allowed.

13:59
That is for a tire site to store tires beyond a year, although currently we do not have any that are in the universe.

14:07
Next slide.

14:12
The next slide here moves into the – I don't think it advanced.

14:18
Okay, there we go.

14:20
The next slide here is for the other proposed fees.

14:24
uh this is for the the landfills registration along with tires um no why is this not advancing i apologize uh angela can you go back yeah i think i think my screen froze okay my apologies this was our first so this was the first one that is correct uh so yeah this is for landfills and the tire sites, as well as the used oil example that I gave.

14:55
Sorry folks.

14:56
Next slide.

14:57
Okay.

14:58
There we go.

14:59
Okay.

14:59
There.

15:01
The next categories here you can see are for those that are BMW.

15:08
The BMW ranges from our transportation to our treatment, storage, and transfer facilities,

the septic haulers, as well as special waste, and as well as some of the final categories there on the bottom. There are some key acronyms that we want to make sure that folks understood.

15:23
In state government, we love to use our acronyms and obviously know that sometimes not everyone understands those.

15:30
So there is a legend there at the bottom to help explain some of the acronyms. Same thing as the previous slide.

15:36
You can see the per current rate versus proposed, as well as those that are subject to initial or those that may be subject to plan review.

15:45
Next slide.

15:55
All right. Did it switch for you? No, I'm still seeing the same thing.

16:01
Okay, it's showing slide 10 on mine, so give me one second.

16:03
I'm going to advance one more and then go back. Okay, it should be on slide 10 right now.

16:24
Okay, there we go, slide number 11. Yes, okay. Thank you. I apologize, it's having troubles.

16:31
Yeah, you know, technology never ceases to surprise us.

16:36
Okay, the next slide here is obviously the various, those that pay the tonnage fees, particularly for landfill, as we've discussed in previous stakeholder meetings, this is done in a number of factors from either based on cubic yards, whether compacted or uncompacted, or by ton, or for those that represent really small political subdivisions based on the population.

17:00
So again, shows the initial rate, which is the current rate that applies today, and then the proposed rate for the rulemaking.

17:12
Next slide.

17:18
So these are the plan review.

17:20
So as you saw in the previous slides, there are certain aspects of the fees that are subject to plan review.

17:26
Plan reviews obviously come with an initial as well as a maximum.

17:32
I do apologize, I think there is an error on this slide.

17:36
The initial is not changing.

17:39
It is only the maximum that is changing.

17:41
And that's because the initial is – think of it as like a deposit.

17:45
And then you're billed at an hourly rate, which is the rate they're listed at the bottom.

17:50
So that is the hourly rate that is increasing up to the maximum.

17:54
The maximum is the only thing that is increasing, and that will be increasing by CPI.

18:00
Next slide.

18:05
This is our category of general permits.

18:07
Again, this is another fee that was set in 2012.

18:12
This one is also being increased by CPI.

18:16
This currently only applies to those mining tire burial sites that we currently have under the rules. Next slide.

18:28
With that I will turn it back over to Mark. Thanks Terry.

18:35
So what you just heard is a summary of the proposed rule and I want to clarify what I maybe said previously that we're not only going to or the department is not only going to respond to the comments but They also have the option, and that's why they have this hearing, to change things in the text of the rule and anything that's in the explanation of the rule as well.

19:05
And so what you just heard was a summary of the proposed rule, which was published on August 16th.

19:15
So, at this time now, it's time for questions, and so now this is where you use the question tool or raise your hand and you can ask questions.

19:28
And I believe Angela is going to call on you and also read out the questions that are in the question tool.

19:37
Okay.

19:38
We don't have any questions in the question tool yet, but the first person to call on is Dave Bennett.

19:45
Dave, can you unmute yourself?

19:50
Sure, thank you.

19:51
Again, yeah, my name is Dave Bennett.

19:54
I'm the Solid Waste Services Director for the City of Scottsdale, represent 85 ,000 rate payers.

20:01
And let me just, I was trying to put something in the notes, but let me get to my questions.

20:07
And again, I wanna thank Mark, you, Julie, Terry, Angela, uh your whole team for uh for all the meetings and and listening to us.

20:18
We really appreciate it and also Krista Osterberg the legislative liaison.

20:24
So uh my first question and I'll I'll try to figure out how to put it in the copy and paste it and put it in there is if the solid waste management program goal is to be a fully let me restate that if the solid waste management program goal is to be a fully self-funded program.

20:45
Why do they choose the method of an annual CPI adjustment to recover costs rather than review the previous fiscal year's actuals, which is revenue and expenses, and then seek

the appropriate rate increase?

21:02
I have two other questions. Do you want me to keep going or stop with that one?

21:09
You might want to stop.

21:11
That was kind of a long question, so it'd probably be easiest to go ahead, Terry.

21:17
Yeah, so thank you, Dave.

21:19
Appreciate the feedback and everything that you have given.

21:23
So the CPI is something that the legislature has set out to, is I think an approved method for the organization to use.

21:35
It's been used by air quality for a number of years.

21:40
Additionally, we started adopting both in the recent rule makings and has waste in water as well.

21:47
So it's the standard that the department has found to be effective and obviously aligns with what the legislature expects.

22:00
Okay.

22:00
Just a follow-up, Terry, on that.

22:02
What will happen when the program is either under-recovering costs or over-recovering costs through using the CPI adjustment method?

22:13
Another good question.

22:15
So we do review, obviously, our financials every single year and evaluate.

22:20
And obviously, this is what led to this rulemaking is that, as we showed, I think, in the earlier stakeholder meetings, the department saw for years that the fees were not sufficient.

22:33

And we finally had to kind of reach a tipping point in which something had to be addressed.

22:39
That still continues to happen.

22:40
And so every year, leadership expects the program to evaluate the effectiveness of the program and then to communicate to leadership if something may be necessary, whether that be engaging in a subsequent rulemaking or if there is potential legislative needs to address those aspects.

23:02
Okay.

23:02
Thanks, Terry.

23:02
My – I have two more, and I'll leave it to the rest of the group.

23:07
Will the program director consider the following?

23:11
Implementing the proposed rate increases on July 1st, 2025 – I'll keep going, I have other ones. On or before January 1st, ADEQ, will they provide cities and towns the regional CPI?

23:28
So I'll go through this here.

23:31
So what we're asking for, not only Scott, so I'm sure you're going to hear from everybody else, is that implementing these rating increases in July 1st, 2025, I understand you and appreciate you guys delaying it, but it really doesn't do us a lot of good uh, in doing that.

23:49
Um, but going forward, if, if, if you, if you guys were to do that, we would still want, um, an annual CPI adjustment to be noted, all the cities and towns to be notified on or before January 1st of that regional CPI adjustment.

24:09
And then the adjustment then taking effect on July 1st of each year going forward.

24:14
So everybody is, you know, operating on the same, you know, budget.

24:19
As far as I know, not only you, but all the other cities and towns, their fiscal year starts on July 1st and ends June 30th.

24:28

So I'm hoping the program director would consider those.

24:33
Those are great comments, Dave, and definitely happy to have those conversations and appreciate you really attending the hearing today to share those.

24:44
and obviously I can't commit that that is up to the director but I think that you make a good argument and really appreciate you going on the record with it.

24:55
All right and my this I promise is my last one I apologize everyone listening because I have do some interviews here in like 20 minutes but my last one was and and this is item contention that I heard from some of our council members that are that are really progressive that want to see us doing more in the recycling uh the the the the tonnage f from 25 cents to 58 cents is it's I don't know if i have not been receiving w are for that recycling gr last year.

25:34
But this year, are being swept.

25:37
So it's tax to everyone if they 'r to constantly be those funds being swept, we would rather not pay it.

25:46
We'd rather have it go into the intent that it has, that it's supposed to be, and that's for, you know, for grants and for research projects.

25:56
So that was my last, I guess, statement there, Terry, so I appreciate it.

26:01
Hey, Terry.

26:02
Yeah, go ahead.

26:03
Yeah.

26:04
Just for the benefit of everyone listening, that's a great example of questions that sound lot like comments, but that we are not obligated, that the agency is not obligated to consider us comments unless they're made in the oral comment period of the, now I understand Mr.

26:24
Bennett has to go do some interviews, and so this is a good example of why you want to get your oral comments in the oral comment portion of the hearing, or even a better idea is to write them all down and email them to us. Thank you, Mark. Thanks,

everyone. Thank you, Mark.

26:45
Yeah, great clarification.

26:46
Yeah, because we do want to make sure that these are getting on the official record since we were in the kind of question-comment period or question-answer. So, Dave, I completely understand the concern.

26:58
You know, DEQ is extremely passionate about recycling grants as well and really wish that we never saw the program go away. I mean, we think that it does a lot of benefit for the state.

27:12
With that said, you know, this rulemaking was originally planned for last year.

27:19
And so, as we kind of talked off in the beginning, the whole goal of making the program sustainable was to continue to sustain those type of research and grant programs that we know are desperately of an economic benefit to the state as well as municipalities.

27:40
So that is the primary goal of us trying to make the program sustainable is so that way we can push for that.

27:48
Obviously there are limitations and what the department can do but needless to say that is our intent.

27:56
We want to make sure that that program continues to be both a part of current generations as well as future generations and would really appreciate that you know that comment going on the official record.

28:13
Okay so um so Dave if you don't have another question at this time if you can try to lower your hand that would be great.

28:25
Our next question that we have is coming out of the question tool and it is from Andrew Linton and the question is were there any new activities or processes considered in calculating the new fees? If yes, are they mandated in statute or rule?

28:42
And I can step in and try to answer that question assuming I'm interpreting that question correctly.

28:49
No, these fees are based on current costs to ADEQ for our current regulatory mandates.

28:56
So not not contemplating future or additional potential activities or processes.

29:02
I would just add to that, Matt, a good example is currently the program is seeking authorization on another solid waste element, and that whole element has its own proposed fees.

29:16
And so it is the goal of the department for any future new activity to evaluate fees for that aspect so that way that they're applicable only to those facilities.

29:28
All right.

29:34
And our next question is, if the Solid Waste Management Program goal is to be a fully self-funded program, why did they choose the method of an annual CPI adjustment to recover costs rather than review the previous fiscal year's actual revenue and expenses and then seek the appropriate rate increases needed?

29:56
If you don't mind, I just restated my things in the comments.

30:02
Oh, I see that.

30:02
the record.

30:08
So just to just to for clarity and Mark please correct me if I misstate something but Dave I know you have to run for an interview so please make sure that either your staff or yourself send that to the Waste Rule Making mailbox or to Matt Rippentrop so that because if it's captured here this is still the Q &A and so it wouldn't be captured as the official public record.

30:31
Will do. Thanks. Thanks, Terry.

30:34
Yes, sir. And just so you guys know, the Waste Rulemaking inbox is literally wasterulemakingatazdeq.gov.

30:44
And Matt's email, you can see his name up here right now. It's ripandtrop.mattatazdeq.gov.

30:56
So at this time, I am not seeing any other, any other hands raised.

31:02

I have not seen any other questions come in.

31:12
Okay then let's go on to the formal comment period of this hearing.

31:18
That's the kind of the main reason we're having this is to present oral arguments and so on and so forth.

31:25
A second opportunity exists with the written comments that can be emailed but I'm now going to open the oral comment period and we use the same method of attempting, but raising your hand or putting, if you put your comment in the chat, it's not going to work.

31:45
You have to actually raise your hand and do the oral comments orally.

31:51
So let's open the oral comment period right now.

32:16
All right.

32:18
Dave Bennett, I see your hand raised again.

32:22
Yeah, it will.

32:22
So, can you just real quick, Mark, can you tell me the difference between the two, the one, what we were just doing previously and now as far as the record?

32:35
Yeah.

32:36
When you were making your questions in the question period, it started out as a question and then it kind of went into some argument and why didn't you do it this way?

32:50
And so, it's difficult for an agency to determine when a particular question becomes a comment or when it's just a question.

33:02
And a lot of times you have questions in the question part, for example, how long is it going to take the agency to respond to my comments or if the agency does not get an immediate effective date, what happens then?

33:18
Your questions sounded a lot like comments and I understand the reason was that you had to leave quick and so Well, do you mind if I go ahead and reiterate my my comments

then I don't mind I if you can go ahead and let's do it as quickly as possible.

33:38
So you can keep on schedule Yeah, no worries.

33:42
And thank you again as I mentioned Dave Bennett City of Scottsdale representing 85 ,000 rate payers, the city is not in favor of the annual CPI adjustment and we're not in favor of the rates being implemented on July 1st of 2025, rather the city is in favor of having these fees take an effect on July 1st of 2025.

34:18
And then subsequent to that, any CPI adjustments would then take a fit.

34:23
Or ADEQ would notify all the cities and towns of their annual CPI adjustment on or before January 1st of each year.

34:33
And then also, any rates that adjustment would the adjustment of the rate would then be take effect in the following July 1st of each subsequent year.

34:47
And my other comment was again about the recycling fund, the additional tonnage fee, the 25 cents going up to 58 cents, not in favor of that.

35:00
Not not necessarily the fee going up, but it's it hasn't intent uh use for its intentions uh we want to if if if that fee is going to go up we want to be used for the intentions of recycling uh grants and uh further research projects to where it's intended to uh have a material that was intended landfill go be reused and be recycled so those are my and I thank you. Thanks, Mark. Thank you.

35:36
So we're still in the formal comment period and we're ready to take more comments.

35:44
Okay, the next hand that we have raised is Julie Rodriguez. Julie, can you unmute yourself? Okay.

35:56
Hi, my name is Julie Rodriguez. I'm with Graham County and I just have a couple comments.

36:01
The first one, and I had talked to Terry about this individually, but I understand what trying to do by being nice and not billing until July of 25, but every accountant and every entity will tell you that doesn't change the fact that the costs belong in the prior year and we're going to have to move it into the prior year.

36:18
So while that's a nice gesture on your part, it doesn't help anybody. It actually makes the

accounting more difficult.

36:24
So I would echo the sentiments of the gentleman from Scottsdale that the fees should be implemented on 7-125, not be billed on 7-125.

36:35
and I also think that a hundred and thirty two percent increase on the tonnage from 25 cents to 58 cents is an unbelievable increase for one time period and I think in rural Arizona it's we live in a different world we don't have those kind of funds sitting around and while you guys can raise your fees to cover your costs we have nobody else to pass these fees on to we certainly can't raise our transfer site fees from you know fifteen dollars a truck to a hundred dollars a truck or we're gonna have wildcat dumping which is what we try to avoid with our transfer fees. Thank you. Okay thank you.

37:20
Any more comments? Hey I'm not seeing, oh we do have another raised hand now.

37:29
Chris can you unmute yourself? Chris Welch.

37:33
I'm the collection superintendent for the town of Likewise, representing about 85 ,000 households and rate payers.

37:42
We would echo the comments from Dave Bennett, not in favor of a CPI adjustment.

37:50
We have to be accountable to our rate payers, justifying all of our costs and making sure that we're passing those on fairly and equitably through rate increases.

38:01
and by adjustment is something that kind of again we'd like to explore something other than a CPI.

38:13
Did I hear correctly that she her audio maybe went out for about five seconds near the end? Yes it did sound like it went out.

38:22
If you'd like to say that last portion again we would appreciate it.

38:27
Just like to explore something other than a CPI so that we could accurately and fully incorporate those into our rate setting processes and our budget cycle.

38:41
Okay, that came through.

38:42
Thank you.

38:46
Okay.

38:47
The next raised hand is Sherry Collins.

38:52
Hi, thank you.

38:53
Can you hear me?

38:55
Okay.

38:56
My name is Sherry Collins and I am the Solid Waste Director for City of Mesa and I represent about 155 ,000 residential rate payers in our city and so just echoing really what Dave that the city of Mesa is not in favor of implementing the per ton fee from 25 cents to 58 cents prior to July 1st of 2025.

39:31
Nor we recommend, we would, yeah, we're not in favor of that.

39:36
We're in favor of implementing on July 1st of 2025.

39:39
And then addition to that with the fees that are being increased and collected, we would like to see a larger portion of that go towards recycling programs.

39:51
And then lastly, City of Mesa is also not in favor of the CPI increase into perpetuity. We would like a different method, use something more along the lines of the actual money that needs to be recovered for operations, not just a standard CPI.

40:14
Thank you.

40:19
We're just getting warmed up, so feel free to think about what you're going to say and put it on the record or at least write it down and send it to the agency tomorrow.

40:43
All right, Sherry, I see that your hand is still raised. I'm not sure if you have another comment or if you don't, if you could just try to lower that hand for us.

40:54
I actually didn't have another comment, but can I clarify?

40:59
If we make comments on here, then we can also send written to the Waste Rulemaking at

azdeq.gov.

41:11
Yes, you can.

41:12
And actually, that's preferred.

41:15
In the many hearings I've done, I've often asked people if you have a set of written comments, could you hand them to me, the hearing officer, right now after you're done reading them?

41:26
Because then we make sure we get all the spelling right.

41:29
We get everything you wanted to say correctly.

41:32
So that would be preferable.

41:34
Go ahead and send them in twice, so to speak.

41:37
Once orally and once in writing.

41:40
Okay.

41:40
Thank you.

41:52
Okay.

41:52
I am not seeing any other hands.

41:54
Are you guys okay if I move to the next slide with Matt's contact information while we're waiting?

42:01
Yeah.

42:01
Go ahead.

42:07
Mark.

42:09

Go ahead.

42:11
Yeah, it looks like there was a question that was put into the thing.

42:17
Are we able to go back to that or do we, since we've already kind of moved up beyond that, do we have to address that afterwards?

42:27
Is it is it identifiable from a particular person? It is from a particular person, yes.

42:35
And it says it's It was put in the question tool, but it sounds like a comment.

42:40
It's not a comment.

42:42
It's actually more of a question.

42:44
Looks like this is their first public hearing attendance, and looks like they're from the university and would like to understand more.

42:54
So is that appropriate to be addressed offline then?

42:57
No, let's do this.

42:59
I will temporarily end the formal comment period, and you can go ahead and answer that as if it came during the question and answer period and then after you're done we'll go back into the formal comment period in case based on that question and your answer people have other comments.

43:19
So right now I'm going to end the temporary pause the formal comment period and let Terry restate that question and answer it or whoever wants to answer it.

43:31
All right Terry do you want to read it or do you want me to? Go ahead Angela.

43:34
Okay. So here it is. Hi, my name is Lisa Tran.

43:40
I am a graduate student in pharmacology and toxicology at the University of Arizona.

43:45
She has some questions since this is her first time attending a hearing like this.

43:50

The first question is, will these fees cover the cost of actual cleanup of hazardous chemicals, biohazardous waste?

43:59
So yeah, great question, Lisa.

44:02
So these fees are designed to cover the department's cost associated with doing our legislative mandates.

44:11
And so those include things such as inspecting a facility, as well as permitting a facility, and if necessary, if we have to enforce against a facility.

44:23
So that's what the fees are designed for.

44:25
Typically, the cleanup aspect of it is leveraged against the facility, and that can sometimes take place through enforcement, whether voluntary or involuntary, to make sure that we're achieving the proper environmental protection.

44:48
All right.

44:48
And then there's a second part to the question.

44:50
Has the state of Arizona dealt with issues with waste disposal due to limited landfill space? And if so, how will waste disposal fees deal with this?

45:05
So I'm not sure that we've encountered limited landfill space in Arizona.

45:14
There are landfills all across the state, ranging from the most rural areas to the most populated dense areas.

45:24
And its space has usually not been a problem for those facilities.

45:30
The state has experienced what we call wildcat dumping.

45:35
And so wildcat dumping, we do take enforcement action as necessary whenever someone can commit that type of activity to make sure that it doesn't happen subsequently thereafter.

45:51
All right, she expressed her gratitude, so that was the end of her question.

45:58
And as long as we're still in the second extended question and answer period, let's open it again temporarily to more questions if necessary for a minute or two.

46:16
Great discussions, by the way, I retired from the department a number of years back and get to work on limited issues in a limited amount of time and so I'm happy to hear all of the great issues being brought up as DEQ tries to move its solid waste activities into the the next century and beyond. It's very gratifying.

46:50
Okay I'm not seeing any other questions coming in the question tool and I am not seeing any raised hands.

46:56
Okay, well, just officially then, go ahead.

47:00
I apologize.

47:01
We just got a raised hand.

47:03
It's Ernest Ruiz.

47:05
I'm not sure if he has a question or if he wants to comment formally.

47:09
So I'm going to unmute you, Ernest.

47:11
Can you unmute yourself?

47:13
Yes, it's a formal comment and just wanted to go on the record.

47:18
Hold on, Ernest.

47:19
I'm just going to formally open the formal comment period one last time.

47:23
I shouldn't say one last time, but to allow this comment period to be or to allow your comment to be on the record. Go ahead. Understood. Yeah, Ernest Reed City Glendale Superintendent for the Landfill.

47:37
Just want to go on the record again, along with the other two municipalities that commented Scottsdale and Mesa I believe it was that we are also in uh in agreement with starting the fees up in july of 2025 allowing those uh fees to catch up in the budget and

then ongoing forward just making sure that they align with the budget um that will allow us to recoup those fees in that fiscal year and uh make it streamlined understanding that you guys have come up with a formula for your for your fees um you know we the letter in July of 2024, so we'd like to have that letter taken into consideration as you guys go through this formal process. That is all. Thank you, Ernest.

48:32
We're still in the formal comment period of this hearing on solid waste fees. Okay, we got a question about the comment period.

48:52
The question is, can the comment period be extended? The deadline of tomorrow at 5 p.m.

48:57
does not allow for coordination internally as many of our offices are closed on Friday.

49:07
I believe that's a decision that has to be made by the agency leadership.

49:17
If he or she is asking, can it be done, can the comment period be extended, in my experience, It occasionally is, but it kind of kills the rule in its present trajectory, and the present trajectory, as I understand it, is the agency wants the immediate effective date.

49:46
So can it be done?

49:48
I believe it legally can be done, but if that's the request, then that should be a formal And as it's a question, this is the confusing part.

50:02
That's why we say, please send it in writing.

50:05
You want comment period extended, not are you asking, is it possible?

50:11
That's a confusing question to answer.

50:26
Okay.

50:27
Well, thank you for the question that sounded like a comment.

50:31
And lots of times the agency will mix comments and questions as they respond because they see the interest, but only once they have to respond to are the ones that are formally comments that they can identify as a comment.

50:50

Go ahead if there's, I hear more bells going off, I don't know if that's somebody raising their hand.

50:56
Hey Mark, quick clarifying question for you.

51:02
If someone has previously submitted something in writing, is that allowed to be included in the record or does that need to be resubmitted by Close of Business Tomorrow as part of the formal comment period?

51:18
If they submitted it after it was published, which is, what, August 16th.

51:25
If it was submitted to us after August 16th, then it's a formal comment.

51:30
If it was submitted to us during some of the stakeholder meetings, then it's not a comment because the proposed rule had not yet been published.

51:43
So the agency can't determine that it was, in fact, a comment on the proposed rule rather than a general comment on the discussions that took place as the proposed rule was being developed.

51:53
So to be on the safe side, resubmit that comment and make sure that it applies to the rule as published on August 16th.

52:03
Thank you, Mark.

52:07
Okay, and it looks like we have another raised hand.

52:12
Ernest, do you have another comment for us?

52:16
Yeah, Ernest, Reese, I just wanna thank Terry for clarifying that because I was gonna ask that question Because we submitted our letter in July.

52:23
So thank you very much for clarifying that we will be resubmitting our letter Great great And feel free to redraft it in case you want to add things and Say it in a different way Yeah, I am NOT seeing any more raised hands And nothing in the question tool.

53:01
Well, this has been an interesting Hearing the formal comment period is still open for a minute or so.

53:07

I make these closing comments There's been a lot of discussion.

53:13
There's been a little bit of mixed questions and comments, but I think it's been educational for everyone here.

53:23
We got, the agency got a number of comments, but pretty much in the same areas.

53:31
I think both the commenters and the listeners learned a lot from what each other was saying.

53:42
And so, unlike many hearings where nobody comments, but a lot of people attend to see what anybody else is going to say, this oral proceeding was very beneficial for everyone.

53:57
Just a reminder, through 5 p.m.

54:01
tomorrow, we'll be accepting email comments at that Waste Rulemaking inbox.

54:07
Yeah, well, you see it on your screen now, or through Matt, who is the, what we call the rule writer on this particular rulemaking.

54:19
And so, it's 324, if there's nobody, are there any other hands raised, Angela?

54:28
There are no hands raised.

54:30
Okay, we're going to close this hearing formally then, and thank you all for attending.

54:35
I still see 64 attendees, so a lot of people were listening.

54:39
That's great.

54:41
Thank you, everyone.

54:43
Have a good day.

54:44
Thank you.

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Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2021 through December 31, 2021

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Questions about these rules? Contact:

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The release of this Chapter in Supp. 21-4 replaces Supp. 21-1, 1-41 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2021 is cited as Supp. 21-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the Code in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

Authority: A.R.S. §§ 41-1003 and 49-104

Supp. 21-4

Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).

Editor's Note: This Chapter contains rules which were adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 49-701.01(C)(1) and (2). Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Department was not required to hold public hearings on these rules.

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Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

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CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

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Article 25, consisting of Section R18-13-2501, expired at 23 A.A.R. 3429, effective October 10, 2017 (Supp. 17-4).

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Article 26, consisting of Sections R18-13-2601 through R18-13-2604, expired at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

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ARTICLE 1. RESERVED

Editor's Note: Article 2, consisting of Section R18-13-201, was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit the rules to the Governor's Regulatory Review Council for review; and the Department was not required to hold public hearings on this Section (Supp. 98-3).

ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means that these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the agency was not required to hold public hearings on these rules (Supp. 98-3).

R18-13-201. Land Application of Biosolids Exemption

A. This Section applies only to biosolids as defined in R18-9-1001. The land application of biosolids, when placed on or applied to the land in full conformity with 18 A.A.C. 9, Article 10 and A.R.S. § 49-761(F), and if the site of land application has ceased to receive application of biosolids and all applicable site restrictions set by A.A.C. Title 18 Environmental Quality have been satisfied, is exempt statewide from the definition of solid waste found at A.R.S. § 49-701.01(A). This exemption applies only when the biosolids and the soil to which it has been applied remain at the site of the application.

B. This exemption does not alter or set any new standard for the soil remediation standards found at 18 A.A.C. 7, Article 2.

Historical Note

Adopted under and exemption from A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2), effective July 27, 1998 (Supp. 98-3). Amended by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-202. Coal Slurry Discharges from Pipeline Leaks Exemption

This Section applies only to coal slurry discharges onto the ground from pipeline leaks. Coal slurry discharges onto the ground from pipeline leaks are exempt statewide from the definition of solid waste prescribed in A.R.S. § 49-701.01(A) if both of the following conditions are met:

1. The discharge was the result of an accidental pipeline leak.
2. The thickness of the layer of coal slurry on the ground that resulted from the discharge is 3 inches or less.

Historical Note

New Section adopted by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3).

ARTICLE 3. REFUSE AND OTHER OBJECTIONABLE WASTES

R18-13-301. Reserved

R18-13-302. Definitions

A. "Approved" means acceptable to the Department.

B. "Ashes" means residue from the burning of any combustible material.

C. "Department" means the Department of Environmental Quality or a local health department designated by the Department of Environmental Quality.

D. "Garbage" means all animal and vegetable wastes resulting from the processing, handling, preparation, cooking, and serving of food or food materials.

E. "Manure" means animal excreta, including cleanings from barns, stables, corrals, pens, or conveyances used for stabling, transporting, or penning of animals or fowls.

F. "Person" means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership or individual.

G. "Refuse" means all putrescible and nonputrescible solid and semisolid wastes, except human excreta, but including garbage, rubbish, ashes, manure, street cleanings, dead animals, abandoned automobiles, and industrial wastes.

H. "Rubbish" means nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, waste metal, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

Historical Note

Section recodified from A.A.C. R18-8-502, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-303. Responsibility

A. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the sanitary condition of said premises, business establishment, or industry. No person shall place, deposit, or allow to be placed or deposited on his premises or on any public street, road, or alley any refuse or other objectionable waste, except in a manner described in these rules.

B. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the storage and disposal of all refuse accumulated, by a method or methods described in these rules.

C. The collection and disposal of all refuse not acceptable for collection by a collection agency is the responsibility of each occupant, business establishment, or industry where such refuse accumulates, and all such refuse shall be stored, collected, and disposed of in a manner approved by the Department.

D. All dangerous materials and substances shall, where necessary, be rendered harmless prior to collection and disposal.

Historical Note

Section recodified from A.A.C. R18-8-503, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-304. Inspection

Representatives of the Department shall make such inspections of any premises, container, process, equipment, or vehicle used for collection, storage, transportation, disposal, or reclamation or refuse as are necessary to ensure compliance with these rules.

Historical Note

Section recodified from A.A.C. R18-8-504, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-305. Collection Required

A. Where refuse collection service is available, the following refuse shall be required to be collected: Garbage, ashes, rubbish, and small dead animals which do not exceed 75 pounds in weight.

B. The following refuse is not considered acceptable for collection but may be collected at the discretion of the collection agency where special facilities or equipment required for the collection and disposal of such wastes are provided:
1. Dangerous materials or substances, such as poisons, acids, caustics, infected materials, radioactive materials, and explosives.
2. Materials resulting from the repair, excavation, or construction of buildings and structures.
3. Solid wastes resulting from industrial processes.
4. Animals exceeding 75 pounds in weight, condemned animals, animals from a slaughterhouse, or other animals normally considered industrial waste.
5. Manure.

Historical Note
Section recodified from A.A.C. R18-8-505, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-306. Notices

A. All collection agencies shall provide each householder, or business establishment served, with a copy of the requirements governing the storage and collection of refuse which shall cover at least the following items:
1. Definitions.
2. Places to be served.
3. Places not to be served.
4. Scheduled day or days of collection.
5. Materials acceptable for collection.
6. Materials not acceptable for collection.
7. Preparation of refuse for collection.
8. Types and size of containers permitted.
9. Points from which collections will be made.
10. Necessary safeguards for collectors.

B. All such notices governing storage and collection shall conform to these rules.

Historical Note
Section recodified from A.A.C. R18-8-506, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-307. Storage

A. All refuse shall be stored in accordance with the requirements of this Section. The owner, agent, or occupant of every dwelling, business establishment, or other premises where refuse accumulates shall provide a sufficient number of suitable and approved containers for receiving and storing of refuse, and shall keep all refuse therein, except as otherwise provided by this Chapter.

B. Garbage shall be stored in durable, rust resistant, nonabsorbent, watertight, and easily cleanable containers, with close fitting covers and having adequate handles or bails to facilitate handling. The size of the container shall be determined by the collection agency.

C. Rubbish and ashes shall be stored in durable containers. Bulky rubbish such as tree trimmings, newspapers, weeds, and large cardboard boxes shall be handled as directed by the collection agency. Where garbage separation is not required, containers for the storage of mixed rubbish and garbage shall meet the requirements specified in subsection (B).

D. Containers for the storage of refuse shall be maintained in such a manner as to prevent the creation of a nuisance or a menace to public health. Containers that are broken or otherwise fail to meet the requirements of the rules shall be replaced, by the owner of said containers, with approved containers.

E. Manure and droppings shall be removed from pens, stables, yards, cages, conveyances, and other enclosures as often as necessary to prevent a health hazard or the creation of a nuisance. All material removed shall be handled and stored in a manner that will maintain the premises nuisance free.

Historical Note
Section recodified from A.A.C. R18-8-507, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-308. Frequency of Collection

A. The frequency of collection shall be in accordance with rules of the collection agency but not less than that shown in the following schedules:
1. Garbage only -- twice weekly.
2. Refuse with garbage -- twice weekly.
3. Rubbish and ashes -- as often as necessary to prevent nuisances and fly breeding.

B. A variance from the required frequency rate may be granted to allow for the collection of garbage once weekly. The variance may be granted by the Department of Environmental Quality upon submission of an acceptable plan approved by the local health department demonstrating that no public health hazards or nuisances will exist and that fly breeding will be controlled by either biological, chemical, or mechanical means. The variance may be revoked whenever the Department of Environmental Quality determines that the circumstances warranting the variance no longer exist.

Historical Note
Section recodified from A.A.C. R18-8-508, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-309. Place of Collection

A. All refuse shall be properly placed on the premises for convenient collection as designated by the collection agency.

B. Where alleys are provided, collection shall be made on the alley side of the premises.

Historical Note
Section recodified from A.A.C. R18-8-509, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-310. Vehicles

A. Vehicles used for collection and transportation of garbage, or refuse containing garbage, shall have covered, watertight, metal bodies of easily cleanable construction, shall be cleaned frequently to prevent a nuisance or insect breeding, and shall be maintained in good repair.

B. Vehicles used for collection and transportation of refuse shall be loaded and moved in such a manner that the contents, including ashes, will not fall, leak, or spill therefrom. Where spillage does occur, it shall be picked up immediately by the collector and returned to the vehicle or container.

C. Vehicles used for collection and transportation of rubbish or manure shall be of such construction as to prevent leakage or spillage, and shall provide a cover to prevent blowing of materials or creating a nuisance.

Historical Note
Section recodified from A.A.C. R18-8-510, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-311. Disposal; General

A. All refuse shall be disposed of by a method or methods included in these rules and shall include rodent, insect, and

nuisance control at the place or places of disposal. Approval must be obtained from the Department for all new disposal sites and may change in the method of disposal prior to use.

B. Carcasses of large dead animals shall be buried or cremated, unless satisfactory arrangements have been made for disposal by rendering or other approved methods.

C. All public "dumping grounds", provided in compliance with A.R.S. § 9-441, shall be maintained and operated in accordance with the requirements of these rules.

D. Manure shall be disposed of by sanitary landfill, composting, incineration, or used as fertilizer in such a manner as not to create insect breeding or a nuisance.

Historical Note
Section recodified from A.A.C. R18-8-511, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-312. Methods of Disposal

Approval must be obtained from the Department for any method or methods used for the disposal of refuse prior to the start of operations, and shall be accomplished by one or more of the methods listed below:

1. Sanitary landfill -- Consists of the disposal of refuse on land and the daily compaction and covering of the refuse with 6 to 12 inches of earth so as to prevent a health hazard or nuisance. The final compacted earth cover shall be a minimum of 2 feet in depth. Where sanitary landfill operations are proposed, the Department will require the following:
   a. The landfill shall be located so that seepage will not create a health hazard, nuisance, or cause pollution of any watercourse or water bearing strata.
   b. Adequate and proper surface drainage shall be provided to prevent ponding or erosion by rainwater of the finished fill.
   c. Provision shall be made for the control of insects, rodents, wind blown refuse, and accidental fire.
   d. Burning of refuse is prohibited.
   e. An all weather access road is required.
   f. Suitable equipment and operating personnel shall be provided.
   g. Salvaging, if permitted, shall be rigidly controlled.
   h. A variance from the daily compaction and covering requirement may be granted for sites serving less than 2,000 people by the Department of Environmental Quality upon submission of an acceptable plan approved by the local health department demonstrating that no public health hazards or nuisances will exist. The variance will allow for compaction and cover every two weeks at sites serving less than 500 people; weekly compaction and cover for sites serving from 500 to 1,000 people; and twice weekly compaction and cover for sites serving from 1,000 to 2,000 people. The variance may be revoked whenever the Department of Environmental Quality determines that the circumstances warranting the variance no longer exist.
2. Incineration -- Where incineration is to be employed, the plans and specifications, along with any other information necessary to evaluate the project, shall be submitted to the Department and approval received prior to construction. In addition, an approved method for the disposal of non-combustible refuse is required. Where incineration is proposed, the following items shall be provided.
   a. The capacity of the incinerator shall be sufficient for the maximum production of refuse expected.
   b. Noncombustible refuse shall be disposed of by methods approved by the Department.
   c. Skilled personnel to assure the proper operation and maintenance of the facilities in a nuisance-free manner.
3. Composting -- This method of disposal is acceptable to the Department under the following conditions:
   a. That plans and specifications and other information necessary to evaluate the project are submitted to the Department and approval received prior to start of construction.
   b. That provisions are made for the proper disposal of all refuse not considered suitable for composting.
   c. Skilled personnel shall be provided to assure the proper operation and maintenance of the facilities in a nuisance-free manner.
4. Garbage grinding -- This method, involving the separate collection and disposal of garbage into a community sewerage system through commercial type grinders or mandatory community-wide installation of individual household grinders, will be acceptable to the Department provided that suitable means shall be provided for the disposal of all remaining refuse.
5. Hog feeding -- This method of disposal will only be approved under the following conditions:
   a. The garbage is collected and stored in suitable containers.
   b. Only approved type vehicles are used for collection.
   c. All garbage is effectively heat-treated in accordance with Title 24, Chapter 7, Article 3 (A.R.S. §§ 24-941 through 24-949).
   d. All remaining refuse, including nonedible garbage, is collected and disposed of separately by methods approved by the Department.
6. Manure disposal -- Manure shall be disposed of by sanitary landfill, composting, incinerating, or used as a fertilizer in such a manner as not to create insect breeding or a nuisance.

Historical Note
Section recodified from A.A.C. R18-8-512, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 4. RESERVED

ARTICLE 5. REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION

R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees

A. The following solid waste facilities requiring self-certification under A.R.S. § 49-762.01 shall register with the Department and pay registration fees as provided in this Section by September 30, 2012, and annually thereafter by September 30th:

1. A transfer facility with a daily throughput of more than 180 cubic yards, including a material recovery facility, but not including:
   a. A material recovery facility where the incoming materials are primarily source separated recyclables; or
   b. Community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, and/or governmental recyclable solid waste.
2. A facility storing 5,000 or more waste tires on any one day and not required to obtain plan approval.

3. A waste tire shredding and processing facility.

B. Initial registration for a new facility. The owner or operator of a planned new facility identified in subsection (A) shall submit the following information to the Department before beginning construction:

1. The name of the solid waste facility.
2. The name, mailing address and telephone number of each owner and operator of the solid waste facility.
3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
5. A diagram of the property showing its approximate size and the planned location of the solid waste facility or facilities.
6. Documentation that the facility will comply with local zoning laws or, if the owner is an agency or political subdivision of this state, with A.R.S. § 49-767.
7. Documentation that the facility has any other environmental permit that is required by statute.
8. A copy of the public notice in a newspaper of general circulation in the area where the facility will be located stating the intent to construct and operate a new solid waste facility pursuant to A.R.S. § 49-762.05.

C. Initial and annual registration for an existing facility. The owner or operator of an existing facility shall submit the following information to the Department annually on a form approved by the Department and note any changes since the last registration:

1. The name of the solid waste facility.
2. The name, address and telephone number of each owner and operator of the solid waste facility.
3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
5. A diagram of the property showing its approximate size and the location of the solid waste facility or facilities.
6. Documentation that the facility remains in compliance with the most current local zoning laws or with A.R.S. § 49-767, as applicable.
7. Documentation that the facility continues to hold any other environmental permit that is required by statute.

D. Self-certification. With each registration under subsection (B) or (C), the owner or operator shall certify that the information submitted is true, accurate, and complete to the best of the person's knowledge and belief.

E. Registration fees. The owner or operator of a transfer facility under subsection (A)(1) shall pay the Department $1,000 for the initial registration of a new or existing facility, and $500 for each annual registration thereafter. The owner or operator of a tire facility under subsection (A)(2) or (3) shall pay the Department $1,000 for the initial registration of a new or existing facility, and $250 for each annual registration thereafter.

F. As used in this Section:

1. "Department" means the Arizona Department of Environmental Quality.
2. "Material recovery facility" means a transfer facility that collects, compacts, repackages, sorts, or processes commingled recyclable solid waste generated offsite for the purpose of recycling and transport, or where source separated recyclable solid waste is processed for sale to various markets, and where the incoming materials are predominantly recyclable solid waste.
3. "Recyclable solid waste" means a product or material described in subsection (F)(3)(a) or (b), and for which subsection (F)(3)(c) is true:
   a. A product with no useful life remaining for the purposes for which it was produced, or if useful life remains, the product will not, due to location, quantity, or owner choice, remain in use or be reused for a purpose for which it was produced.
   b. A material that is a result of a process or activity whose purpose was to produce something else.
   c. The product or material retains some economic value, with or without further processing, as a raw material or feedstock in some process other than incineration or combustion.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 6. RESERVED

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

R18-13-701. Definitions

In addition to the definitions provided in A.R.S. §§ 49-701, 49-701.01, and 49-851, and 18 A.A.C. 13, the following definitions apply in this Article:

1. "Aquifer Protection Permit" or "APP" means the permit that is required pursuant to A.R.S. § 49-241.
2. "MSWLF" means a municipal solid waste landfill as defined in A.R.S. § 49-701.
3. "Non-APP requirements for Non-MSWLFs" means 40 CFR 257 requirements and the restrictive covenant and location restrictions required in A.R.S. Title 49, Chapter 4.
4. "Non-MSWLF" means a landfill that is not a municipal solid waste landfill as defined in A.R.S. § 49-701.
5. "RD&D" means research, development, and demonstration.
6. "Review hours" means the hours or portions of hours that the Department's staff spends on a request for a plan review. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
7. "Review-related costs" means any of the following costs applicable to a specific plan review:
   a. Presiding officer services for public hearings on a plan review decision,
   b. Court reporter services for public hearings on a plan review decision,
   c. Facility rentals for public hearings on a plan review decision,
   d. Charges for laboratory analyses performed during the plan review,
   e. Other reasonable and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.
8. "Solid waste facility plan" means a plan or the individual components of a plan, such as the design, operational, closure, or post-closure plan, or the demonstration of

financial responsibility as required by A.R.S. § 49-770, submitted to the Department for review and plan approval.

Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Amended effective May 15, 1997 (Supp. 97-2). Amended by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-702. Solid Waste Facility Plan Review Fees

A. With each application submitted for approval pursuant to A.R.S. § 49-762.03, the applicant shall remit an initial fee in accordance with one of the fee tables in this subsection, unless otherwise provided in subsection (B). This subsection also lists the maximum fees that the Department will bill the applicant. All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

Fee Tables

Fees for Plan Review of New Solid Waste Facilities		
	Initial	Maximum
Solid Waste Landfills	$20,000	$200,000
Non-APP requirements for Non-MSWLFs operating under an APP	$2,000	$50,000
Other Solid Waste Facilities Subject to Plan Approval	$10,000	$100,000

Fees for Modifications to Solid Waste Facility Plans		
	Initial	Maximum
Solid Waste Landfills - Type IV	$1,500	$150,000
Solid Waste Landfills - Type IV - RD&D	$15,000	$150,000
Solid Waste Landfills - Type III	$750	$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type IV	$750	$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type III	$500	$50,000

Fees for Review of Financial Responsibility Plans for Solid Waste Facilities		
	Initial	Maximum
Annual Review for Solid Waste Landfills	$600 Flat Fee	N/A
Other Solid Waste Facilities	$200	$5,000

B. The Department shall bill an applicant for plan review services, subject to an hourly rate, no more than monthly, but at least semi-annually. The following information shall be included in each bill:

1. The dates of the billing period;
2. After January 1, 2013, the date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
   a. Each review task performed,
   b. The facility and operational unit involved, and
   c. The hourly rate;
3. A description and amount of any other reasonable review-related cost; and
4. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.

C. Within 30 days after the Department makes a final determination whether to approve or disapprove of the facility plan, or when an applicant withdraws or closes the application for review, the Department shall prepare and issue a final itemized bill of its review. If the Department determines that the actual cost of reviewing the plan is less than the initial fee and any interim fees paid, the Department shall refund the difference to the applicant within 30 days after the issuance of the approval or disapproval of the application. If the Department determines that the actual cost of plan review is greater than the corresponding amount listed, the Department shall list the amount that the applicant owes on the final itemized bill, except that the final itemized bill shall not exceed the applicable maximum fee specified in subsection (A). The applicant shall pay in full the amount due within 30 days of receipt of the final itemized bill.

D. If the final bill is not paid within the 30 days, the Department shall mail a second notice to the applicant. Failure to pay the amount due within 60 days of receipt of the notice shall result in the Department initiation of proceedings for suspension of the approval, in accordance with A.R.S. § 49-782. The suspension shall continue until full payment is received at the Department. If full payment is not received at the Department within 365 days of the date of the approval, the approval shall be revoked in accordance with A.R.S. § 49-782. The Department shall not review any further plans for an entity which has not paid all fees due for a previous review of a solid waste facility plan.

E. When determining actual cost under subsection (C), the Department shall use an hourly billing rate for all review hours spent working on the review of a plan, and add review-related costs which were incurred but are not included in the hourly billing rate.

F. The hourly rate is $122.00, beginning July 1, 2012, and shall remain in effect until it is either changed or repealed.

Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Corrected typographical error "facilities" in Schedules A, B, and C, to reflect Section filed in the Office of the Secretary of State December 1, 1995. Section amended effective May 15, 1997; except for special waste management plan component fees listed in Schedules A, B, and C, which become effective July 1, 1997 (Supp. 97-2). Amended by exempt rulemaking at 5 A.A.R. 3869, effective October 1, 1999 (Supp. 99-3). Amended by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-703. Review of Bill

A. An applicant who disagrees with the final bill received from the Department for plan review and issuance or denial of a solid waste facility plan approval under this Article may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.

B. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the

Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. §§ 41-1092 through 1092.12.

Historical Note
Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-704. Repealed

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-705. Repealed

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-706. Repealed

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 8. GENERAL PERMITS

R18-13-801. General Permit Fees

A. The Department shall assess annual fees for operation under a general permit established in rule as described in the Table below.

B. In addition to the technical requirements proposed for any general permit to be included in this Article, the Department shall propose the category to be assigned to the permit according to the Table below.

C. An applicant shall pay the initial fee when approval to operate is requested. The Department shall bill an annual fee to facilities that have not notified the Department that they are no longer operating and have met the closure requirements of this Chapter.

D. For the purpose of this Article, "complex" has the meaning in A.A.C. R18-1-501. "Standard" is any facility that is not complex.

Solid Waste General Permits

Category	Initial Fee	Annual Fee
Collection, Storage and Transfer-Standard	$750	$100
Collection, Storage and Transfer-Complex	$7,500	$1,000
Treatment-Standard	$1,000	$100
Treatment-Complex	$10,000	$1,000
Disposal	$15,000	N/A

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations

A. This general permit is adopted pursuant to A.R.S. § 49-706 as an alternative to plan approvals for facilities identified in A.R.S. § 49-762(A)(1). This general permit authorizes disposal of solid waste in a landfill at a mining operation if the landfill meets one of the following criteria:
1. The landfill is identified as a discharging facility in an area-wide aquifer protection permit and is located within the pollutant management area developed for that permit; or
2. The landfill is located within the pollutant management area of an area-wide aquifer protection permit but is exempt from the permit requirement because it contains only inert material as defined in A.R.S. § 49-201; or
3. The landfill is located at a site qualifying as a groundwater protection permit facility as defined in A.R.S. § 49-241.01(C) and the site has submitted an administratively complete application for an aquifer protection permit that has not been denied. Landfills that are located at mining operations and that are subject to best management practices under A.R.S. § 49-762.02(6) are required to comply with those practices and do not require coverage under this general permit.

B. Authorized and prohibited materials.
1. Disposal of the following is allowed under this general permit:
   a. Solid waste generated at the mining operation where the landfill is located; and
   b. Incidental amounts of putrescible waste generated at the mining operation where the landfill is located. For the purposes of this Section, "putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds.
2. Disposal of the following is prohibited under this general permit:
   a. Used oil as defined in A.R.S. § 49-801(3).
   b. Human excreta as defined in R18-13-1102.
   c. Special waste as defined in A.R.S. § 49-851(A)(5).
   d. Biohazardous medical waste as defined in R18-13-1401.
   e. Radioactive waste material regulated for disposal pursuant to Title 12, Chapter 1 of the Arizona Administrative Code.
   f. Hazardous waste as defined in A.R.S. § 49-921(5), including hazardous waste generated by a conditionally exempt small quantity generator.
   g. Bulk or noncontainerized liquid waste.
   h. Waste containing polychlorinated biphenyls regulated for disposal pursuant to 40 CFR 761.

C. A person may operate a landfill at a mining operation under this general permit if:
1. Operation of the landfill complies with the requirements of this Section;
2. The person files a Notice of Intent to Operate that complies with subsections (D) and (E);
3. The person satisfies any requests for additional information from the Department regarding the Notice of Intent to Operate landfill operation and receives a written Authorization to Operate from the Director; and

4. The person submits the applicable fee established in R18-13-801 for the Disposal category.

D. Notice of Intent to Operate. An applicant shall submit to the Department a Notice of Intent to Operate under this general permit. The Notice shall contain:
1. The name, address, and telephone number of the applicant;
2. The name, address, and telephone number of a contact person familiar with the operation of the facility;
3. The legal description of the landfill area, latitude and longitude coordinates, a detailed figure(s) showing both the existing landfill boundary and the anticipated future waste footprint of the landfill at the time of closure, and a map showing the location of the landfill within the mining operation;
4. A description of how the applicant will meet the public access restrictions in subsection (H)(3);
5. A description of how the applicant will meet the cover requirements in subsection (H)(4);
6. A description of how the applicant will meet the methane requirements in subsection (H)(5). For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring sampling results from either:
   a. One (1) measurement per acre of landfill waste footprint; or
   b. A minimum of four (4) monitoring probes installed to the depth of refuse around the perimeter of the landfill and measured quarterly for the presence of methane gas for a period of one (1) year;
7. A narrative description of the landfill, including whether the landfill is existing or planned, the acreage of the current and planned waste footprint, estimated disposal capacity in cubic yards, expected lifespan, projected rate of waste disposal in tons per day or per week, and sources of solid waste generation;
8. A listing of any other federal or state environmental permits issued for or needed by the landfill, including any individual plan approval, APP, Groundwater Quality Protection Permit, or Notice of Disposal; and
9. A signature on the Notice of Intent to Operate certifying that the applicant agrees to comply with all terms of this general permit.

E. Existing facility application deadline. Existing facilities that qualify for coverage under subsections (A)(1), (A)(2), or (A)(3) on the effective date of this rule shall submit a Notice of Intent to Operate within 2 years of the effective date of this rule to obtain coverage. The Director may extend this date in individual cases if the facility could not have submitted an administratively complete Notice in time with reasonable diligence.

F. Authorization review.
1. Inspection. The Department may inspect the facility to determine that the applicable terms of this general permit are being met.
2. Authority to Operate issuance.
   a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of this general permit, the Director shall issue an Authority to Operate.
   b. The Authority to Operate authorizes the person to operate the landfill under the terms of this general permit.
3. Authority to Operate denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of this general permit, the Director shall notify the person of the decision not to issue the Authority to Operate and the person shall not operate the landfill under this general permit. The notification shall inform the person of:
   a. The reason for the denial with reference to the statute or rule on which the denial is based;
   b. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
   c. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

G. Statutory requirements. The landfill shall be:
1. Located according to the applicable location restrictions in A.R.S. § 49-772; and
2. Subject to a restrictive covenant recorded pursuant to A.R.S. § 49-771.

H. Operational requirements.
1. Inspect the landfill at least quarterly and after large storm events for overall integrity and condition of the facility, including stormwater diversions, and conduct maintenance and repairs as needed. For the purposes of this Section, a "large storm event" is defined as one-half inch of precipitation in any 24-hour period.
2. Direct storm water runoff from surrounding areas away from the landfill.
3. Restrict public access to the landfill or to the mining operation site by signs or physical barriers, including natural barriers.
4. Apply cover at such frequencies and in such a manner as to control windblown dispersion of waste, reduce the risk of fire and impede disease vectors' access to the waste, taking into account the types and volumes of waste placed in the landfill, the frequency of disposal, and other relevant considerations. The Department may allow other techniques that are demonstrated to be equally protective as applying cover material.
5. Concentrations of methane gas shall not exceed 25% of the lower explosive limit in facility structures within 100 feet of the landfill boundary and shall not exceed the lower explosive limit beyond the landfill boundary.
6. Methane monitoring.
   a. For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring data as described in subsection (D)(6) with the Notice of Intent to Operate.
      i. If the data demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit, then no methane monitoring is required in order to operate under this permit.
      ii. If the data demonstrate that concentrations of methane gas exceed 25% of the lower explosive limit, then annual methane monitoring using one of the data gathering methods described in subsection (D)(6) is required in order to operate under this permit. Results of such annual methane monitoring shall be submitted to the Department.
         (1) A person operating a landfill subject to annual methane monitoring may reduce monitoring to once every five years if the results of three consecutive annual sam-

pling events demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit.

(2) A person operating a landfill subject to annual methane monitoring may request the Department to reduce or eliminate such monitoring based on any other methods approved by the Department, including consideration of the potential for methane gas to be present in facility structures within 100 feet of the landfill boundary at concentrations exceeding 25% of the lower explosive limit.

b. For landfills that have not accepted waste prior to the effective date of this Section, no methane monitoring is required in order to obtain coverage or operate under this permit.

7. Maintain an operating record that documents compliance with the conditions in this permit.

I. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:

1. Landfill construction drawings and as-built plans, if available;
2. The operating record required by subsection (H)(7); and
3. Methane monitoring results, if any, obtained under subsection (H)(6).

J. Reporting requirements. A permittee shall report the following to the Department:

1. Methane monitoring concentrations that exceed those listed in subsection (H)(5) within 7 days of the determination.
2. A change in ownership or expansion of the planned waste footprint as soon as practicable. These events shall require the filing of a new Notice of Intent to Operate.

K. General applicability. Landfills covered under this general permit:

1. Are not subject to rules adopted by the Department under A.R.S. § 49-761.
2. Are exempt from the solid waste facility plan requirements in A.R.S. §§ 49-762.03 and 49-762.04 as provided in A.R.S. § 49-762(B).

L. For the purposes of this Section, "mining" has the definition at A.R.S. § 27-301.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2679, effective November 9, 2014 (Supp. 14-3).

ARTICLE 9. SOLID WASTE MANAGEMENT PLANNING

R18-13-901. Reserved

R18-13-902. Expired

Historical Note

Section recodified from A.A.C. R18-8-402, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2983, effective September 15, 2016 (Supp. 16-3).

ARTICLE 10. RESERVED

ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA

Article 11 recodified from existing Sections in 18 A.A.C. 8, Article 6 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1101. Reserved

R18-13-1102. Definitions

A. "Chemical toilet" means a toilet with a watertight, impervious pail or tank that contains a chemical solution placed directly under the seat and a pipe or conduit that connects the riser to the tank.

B. "Department" means the Department of Environmental Quality or a local health department designated by the Department.

C. "Earth-pit privy" means a device for disposal of human excreta in a pit in the earth.

D. "Human excreta" means human fecal and urinary discharges and includes any waste that contains this material.

E. "License" means a stamp, seal, or numbered certificate issued by the Department.

F. "Pail or can type privy" means a privy equipped with a watertight container, located directly under the seat for receiving deposits of human excreta, that provides for removal of a waste receptacle that can be emptied and cleaned.

G. "Person" means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, or individual.

H. "Sewage" means the waste from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in residences, institutions, public and business buildings, mobile homes, and other places of human habitation, employment, or recreation.

Historical Note

Recodified from R18-8-602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1103. General Requirements; License Fees

A. Any person owning or operating a vehicle or appurtenant equipment used to store, collect, transport, or dispose of sewage or human excreta that is removed from a septic tank or other onsite wastewater treatment facility; earth pit privy, pail or can type privy, or other type of privy; sewage vault; or fixed or transportable chemical toilet shall obtain a license for each vehicle from the Department. The person shall apply, in writing, on forms furnished by the Department and shall demonstrate that each vehicle is designed and constructed to meet the requirements of this Article.

B. A person shall operate and maintain the vehicle and equipment so that a health hazard, environmental nuisance, or violation of a water quality standard established under 18 A.A.C. 11 is not created.

C. License terms.

1. For each vehicle newly licensed after June 30, 2012, the initial license fee shall be $250 and shall be submitted with the license application. After initial licensure of a vehicle, the Department will renew the license annually after payment of a $75 fee according to subsection (C)(3). The licensee shall submit the Department approved renewal form and annual license fee to the Department no later than 30 days before expiration.
2. For those vehicles licensed before July 1, 2012, the initial license fee shall be $75 and shall be paid within 30 days of receipt of an invoice from the Department. The license shall be valid for one year. The licensee shall submit the Department approved renewal form and the annual license fee of $75 to the Department no later than 30 days before expiration.
3. Each vehicle license may be renewed if:
   a. The annual license fee is paid,

b. The owner or operator is in compliance with subsection (D),
c. The vehicle is operated by the same person for the same purpose, and
d. The vehicle is maintained according to this Article.

4. The license is not transferable either from person to person or from vehicle to vehicle.
5. The license holder shall ensure that the license number is plainly and durably inscribed in contrasting colors on the side door panels of the vehicle and the rear face of the tank in figures not less than 3 inches high, and that the numbers are legible at all times.

D. Any person owning or operating a vehicle or appurtenant equipment used to collect, store, transport, or dispose of sewage or human excreta shall obtain any required permit from the local county authority in each county in which the person proposes to operate.

Historical Note
Recodified from R18-8-603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1104. Repealed

Historical Note
Recodified from R18-8-604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1105. Reserved

R18-13-1106. Inspection
The Department may inspect vehicles and appurtenant equipment used to collect, store, transport, or dispose sewage or human excreta as necessary to assure compliance with this Article.

Historical Note
Recodified from R18-8-606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1107. Reserved

R18-13-1108. Repealed

Historical Note
Recodified from R18-8-608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1109. Reserved

R18-13-1110. Reserved

R18-13-1111. Reserved

R18-13-1112. Sanitary Requirements

A. A person owning or operating a vehicle or appurtenant equipment to collect, store, transport, or dispose of sewage or human excreta shall ensure that:
1. Sewage and human excreta is collected, stored, transported, and disposed of in a sanitary manner and does not endanger the public health or create an environmental nuisance;
2. The vehicle is equipped with a leak-proof and fly-tight container that has a capacity of at least 750 gallons and all portable containers, pumps, hoses, tools, and other implements are stored within a covered and fly-tight enclosure when not in use;
3. Contents intended for removal are transferred as quickly as possible by means of a portable fly-tight container or suction pump and hose to the transportation container.
4. The transportation container is tightly closed and made fly-tight immediately after the contents have been transferred,
5. Portable containers are kept fly-tight while being transported to and from the vehicle,
6. Any waste dropped or spilled in the process of collection is cleaned up immediately and the area disinfected;
7. The vehicle, tools, and equipment are maintained in good repair at all times and, at the end of each day's work, all portable containers, transportation containers, suction pumps, hose, and other tools are cleaned and disinfected; and
8. All wastes collected are disposed of according to the recommendations of the local county health department and that no change in the recommended method of disposal is made without its prior approval. The local county health department shall recommend disposal by one of the following methods:
   a. At a designated point into a sewage treatment facility or sewage collection system with the approval of the owner or operator of the facility or system,
   b. By burying all wastes from chemical toilets in an area approved by the local county health department, or
   c. Into a sanitary landfill with approval of the owner or operator of the landfill and following any precautions designated by the owner and operator to protect the health of the workers and the public.

B. Open dumping is prohibited except in designated areas approved by the local county health department.

Historical Note
Recodified from R18-8-612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1113. Repealed

Historical Note
Recodified from R18-8-613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1114. Repealed

Historical Note
Recodified from R18-8-614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1115. Repealed

Historical Note
Recodified from R18-8-615 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1116. Suspension and Revocation

A. If a Department inspection indicates that a licensed vehicle is not maintained and operated or work cannot be performed

according to this Article, the Department shall notify the owner in writing of all violations noted.

B. The Department shall give the owner a reasonable period of time to correct the violations and comply with the provisions of this Article. If the owner fails to comply within the time limit specified, the Department may suspend or revoke the vehicle license based on the number and severity of violations. The Department shall follow the provisions of A.R.S. Title 41, Chapter, Article 10 in any suspension or revocation proceeding.

C. The Department shall consider the revocation or suspension of a permit by a local health department for violation of this Article as grounds for revocation of the vehicle license. The local health department shall immediately suspend both the vehicle license and the permit issued by the local health department for gross violation of this Article if in the opinion of the local health department a serious health hazard or environmental nuisance exists.

D. The owner of the vehicle whose license is suspended or revoked may appeal the final administrative decision as permitted under A.R.S. § 41-1092.08.

Historical Note

Recodified from R18-8-616 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1117. Reinstatement

Upon request of the vehicle owner, the Department may reinstate a suspended or revoked vehicle license following a Department reinspection and based on an evaluation of compliance with the requirements of this Article.

Historical Note

Recodified from R18-8-617 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1118. Repealed

Historical Note

Recodified from R18-8-618 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1119. Repealed

Historical Note

Recodified from R18-8-619 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1120. Repealed

Historical Note

Recodified from R18-8-620 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

ARTICLE 12. WASTE TIRES

R18-13-1201. Definitions

In addition to the definitions provided in A.R.S. § 44-1301, the following definitions apply in this Article:

"Aquifer protection permit" means an authorization issued by the Department under A.R.S. § 49-241 et seq.

"Burial cell" means an area where mining waste tires are placed in or on the land for burial.

"Mining" means activities dedicated to the exploration, extraction, beneficiation, and processing, including smelting and refining, of metallic ores.

"Mining facility" means any land, building, installation, structure, equipment, device, conveyance, or area dedicated to mining.

"Mining waste tire" means an off-road tire that is greater than three feet in outside diameter that was used in mining.

"Operator" means an owner, part owner, management agency, or lessee of a mining facility, a person responsible for the overall operation or control of a mining facility, or an authorized representative of the operator.

"Person" is defined in A.R.S. § 49-201.

"Waste tire cover" means waste tires that are chopped or shredded into pieces that do not exceed four inches in diameter used for cover at a solid waste landfill.

Historical Note

Section recodified from A.A.C. R18-8-701, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1202. Burial of Mining Waste Tires

A. The operator shall file with the Director a one-time notice within 24 hours after commencement of burial of mining waste tires consisting of a map of the mining facility that clearly identifies the locations and dimensions of each burial cell and the estimated number of mining waste tires that will be buried in each cell. The operator shall identify each burial cell using an alphabetical or numeric identifier. If a mining facility uses a new burial cell not included in the commencement of burial notice, the operator shall notify the Department within 24 hours after commencement of burial in that cell.

B. An operator shall only permit burial of mining waste tires in areas that are, or will be, included in an aquifer protection permit issued for the mining facility. An operator shall not permit burial of mining waste tires in leach areas unless prior to burial the Department issues an aquifer protection permit covering the leach area.

C. An operator shall not permit a burial cell to be located within 10 feet of another burial cell.

D. An operator shall not permit the burial of mining waste tires unless the tires are waste generated at the mining facility or another mining facility of the same owner.

Historical Note

Section recodified from A.A.C. R18-8-702, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1203. Cover Requirements

A. The operator shall cover all mining industry off-road motor vehicle waste tires buried pursuant to this Article with a minimum of 6 inches of earthen material within 50 days of placement, or sooner if necessary, to prevent vector breeding or fire.

B. The operator shall place final cover over the off-road motor vehicle waste tires within 180 days after placement of the last tire which will be buried in a cell. The final cover shall consist of earthen material which is at least 3 feet deep or which complies with the requirements of the aquifer protection permit for the area where the burial cell is located.

C. The operator shall maintain final cover in compliance with this Section for as long as the mining industry off-road motor vehicle waste tires remain in the burial cell.

Historical Note
Section recodified from A.A.C. R18-8-703, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1204. Annual Report
By March 30 of each year, until a burial cell closure certification is filed with the Department, the operator of the mining facility shall file an annual report with the Director which documents the location of each burial cell established during the preceding calendar year, the alphabetical or numerical identifier of each burial cell, and the number of off-road motor vehicle waste tires which were placed in each burial cell for burial during the preceding calendar year. If no tires were placed in the burial cell for burial during the preceding year, the annual report shall so indicate.

Historical Note
Section recodified from A.A.C. R18-8-704, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1205. Burial Cell Closure Certification
An operator shall file with the Director a burial cell closure certification within 30 days after placing final cover over the mining waste tires under R18-13-1203(B). The certificate shall contain a statement by the operator that no additional tires will be buried in the burial cell and a statement by an Arizona registered engineer certifying that the cover requirements of R18-13-1203 have been met.

Historical Note
Section recodified from A.A.C. R18-8-705, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1206. Storage
At no time shall more than 500 mining industry off-road motor vehicle waste tires be stored at the mining facility outside of a burial cell unless the mining facility has Department approval to operate a waste tire collection facility, pursuant to A.R.S. §§ 44-1304 and 49-762.

Historical Note
Section recodified from A.A.C. R18-8-706, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1207. Maintenance of Records
For at least three years after the burial cell closure certification is filed with the Department, the mining facility operator shall maintain, at the mining facility, records which document the number of tires buried in each cell.

Historical Note
Section recodified from A.A.C. R18-8-707, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1208. Inspections
The Department may inspect a mining facility, during regular operating hours, to determine whether mining industry off-road motor vehicle waste tire burial is in compliance with this Article.

Historical Note
Section recodified from A.A.C. R18-8-708, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1209. Repealed

Historical Note
Section recodified from A.A.C. R18-8-709, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Section repealed by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1210. Waste Tire Cover
Waste tires used as cover at a solid waste landfill shall be used according to the solid waste facility plan required by A.R.S. § 49-762. An operator shall not permit mining waste tires to be used as cover at a solid waste landfill for more than two consecutive days at a time.

Historical Note
Section recodified from A.A.C. R18-8-710, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1211. Registration of New Waste Tire Collection Sites; Fee

A. A new waste tire collection site shall not begin operation after July 20, 2011, until the owner or operator registers with the Department. The owner or operator shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable. The owner or operator of a new waste tire collection site that begins operation after July 20, 2011, shall pay an initial registration fee of $500 within 30 days of invoice receipt. For purposes of this Section, "new waste tire collection site" means a waste tire collection site as defined in A.R.S. § 44-1301 that did not operate as a collection site on or before July 20, 2011.

B. The owner or operator shall pay a $75 registration fee annually thereafter within 30 days of invoice receipt.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1212. Registration of Outdoor Used Tire Sites; Fee

A. A person shall not store 100 or more used tires outdoors until the person registers with the Department. A person that stores 100 or more used tires outdoors after July 20, 2011, shall pay an initial registration fee of $500 within 30 days of invoice receipt. The person shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable.

B. A $75 registration fee shall be paid annually thereafter within 30 days of invoice receipt.

C. For the purposes of this Section:
1. "Used tire" means any tire which has been used for more than one day on a motor vehicle.
2. "Outdoors" means other than inside a building with a weatherproof roof.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee

A person who is required to register a tire facility under more than one of the Sections listed in subsections (1) through (3) shall register and follow procedures under each Section, but is only required to pay the registration fees under the Section with the highest fees.

1. R18-13-1211.
2. R18-13-1212.
3. R18-13-501.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 13. SPECIAL WASTE

R18-13-1301. Definitions

In addition to the terms prescribed in A.R.S. § 49-851, the terms in this Article shall have the following meanings:

1. "Disposal" means discharging, depositing, injecting, dumping, spilling, leaking, or placing special waste into or on land or water so that the special waste or any constituent of the special waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwater.
2. "Exception report" means a report that a generator shall submit to the Director which notifies the Director that the generator has not received a copy of the special waste manifest from the primary or alternate special waste receiving facility to which the special waste was sent pursuant to the generator's instructions on the special waste manifest, or from any special waste receiving facility to which special waste was sent.
3. "Generator" means a person whose act or process onsite produces a special waste listed in, or designated pursuant to, A.R.S. §§ 49-852, 49-854, and 49-855, or whose act or process first causes such special waste to be subject to regulation.
4. "Identification number" means an alphanumeric identifier issued by the Department to each generator, special shipper, and special waste receiving facility to be used on documents, as required pursuant to this Article, in conjunction with shipment of special waste.
5. "Off-site consignment" means a generator's delivery of materials or wastes for transport off-site to a special waste receiving facility within Arizona for treatment, storage, recycling, or disposal.
6. "Off-site" means any property located within Arizona that is not onsite as defined in A.R.S. § 49-851(3).
7. "Operator" means a person who owns and controls all or part of a special waste receiving facility, or who leases, operates, or controls such facility, a person responsible for the overall operation of such a facility, a management agency, or an authorized representative.
8. "Recycling" means recycling as defined in A.R.S. § 49-831(21).
9. "Shredder residue" means waste from the shredding of motor vehicles.
10. "Significant manifest discrepancy" means a difference of more than 10% by weight for bulk shipments, any variation in a piece count for a batch delivery, or any difference in the type of special waste received as compared to the type of special waste listed on the manifest.
11. "Special waste receiving facility" means an off-site location to which special waste is sent to be treated, recycled, stored, or disposed.
12. "Special waste manifest" means a form provided by the Department, shown as Appendix B to this Article, and used to identify the origin, quantity, composition, routing, and destination of special waste during its transportation from a generator's facility to a special waste receiving facility.
13. "Special waste shipper" means a person who transports special waste for off-site treatment, recycling, storage, or disposal.
14. "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of special waste.

Historical Note

Section recodified from A.A.C. R18-8-301, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1302. Special Waste Generator Manifesting Requirements

A. A generator shall request a generator identification number on a form provided by the Director, and shown as Appendix A to this Article, prior to shipping special waste. Within 30 days of receiving the completed form, the Director shall issue the identification number to the generator.

B. Prior to off-site consignment of special waste, the generator shall do all of the following:

1. Complete and sign the "Generator" section of a special waste manifest.
2. Obtain the handwritten signature of the special waste shipper on the special waste manifest.
3. Retain the generator's copy of the special waste manifest.
4. Give the special waste manifest and the remaining attached copies to the special waste shipper or forward it to the receiving facility.

C. Within 14 days after shipment was accepted by a special waste shipper for off-site consignment, the generator shall submit to the Director one legible copy of each special waste manifest with the generator's section completed and containing signatures of the generator and special waste shipper.

D. If, within 35 days after the date the waste was accepted by the initial special waste shipper, the generator does not receive a completed copy of this special waste manifest with the handwritten signature of the special waste receiving facility operator, the generator shall contact the special waste shipper and the special waste receiving facility operator to determine the status of the special waste.

E. The generator shall submit an exception report to the Director if the generator does not receive a completed, signed, legible copy of the special waste manifest within 45 days of the date the waste was accepted by the initial special waste shipper for off-site consignment. The exception report shall contain both of the following:

1. A cover letter, signed by the generator, which explains the efforts made to locate the special waste and the results of those efforts.
2. A legible copy of the special waste manifest which was signed by the generator and the special waste shipper and retained by the generator.

F. The generator shall retain a legible copy of each signed special waste manifest for at least three years from the date of acceptance of a shipment of special waste for off-site consignment.

G. If a person is required to have a manifest, shipping paper or shipping record under federal law for the special waste, the federal manifest, shipping paper, or shipping record may be used in lieu of the Arizona special waste manifest form so long as the federal manifest, shipping paper, or shipping record includes all the information required on the Arizona special waste manifest form.

Historical Note
Section recodified from A.A.C. R18-8-302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1303. Special Waste Shipper Manifesting Requirements

A. A special waste shipper who receives special waste in Arizona for transport to a special waste receiving facility in Arizona shall request a special waste shipper identification number on a form provided by the Director and shown as Appendix A to this Article. The Director shall issue an identification number within 30 days of receipt of the completed form.

B. A special waste shipper shall:
1. Accept special waste for intrastate shipment to a special waste receiving facility only if the waste is accompanied by a special waste manifest which is completed and signed in accordance with the provisions of R18-13-1302.
2. Deliver the entire shipment of special waste to a special waste receiving facility as designated on the special waste manifest. If unable to deliver the special waste to the primary or alternate special waste receiving facility designated on the special waste manifest:
   a. Return the special waste to the generator, or
   b. Contact the generator and obtain instructions for an alternate special waste receiving facility and deliver the waste accordingly.

C. Shipments of special waste between facilities owned by the same generator shall be exempt from the requirements of rules adopted pursuant to A.R.S. § 49-856.

Historical Note
Section recodified from A.A.C. R18-8-303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1304. Special Waste Receiving Facility Manifesting Requirements

A. A special waste receiving facility shall request an identification number on a form provided by the Director, and shown as Appendix A to this Article, and obtain the number prior to receiving special waste. The Department shall issue the identification number within 30 days of receipt of the completed form.

B. A special waste receiving facility shall receive only special waste for which it has a special waste manifest signed and dated by the generator and special waste shipper. In the "Facility" section of the special waste manifest, the operator of the special waste receiving facility shall do all of the following:
1. Enter the identification number.
2. Sign and date each copy of a special waste manifest to certify that the type and amount of special waste, as stated on the special waste manifest, was received.
3. Indicate on the special waste manifest any significant discrepancies between the description, volume, or weight of the special waste as stated on the special waste manifest and the special waste received.

C. After completing the "Facility" portion of the special waste manifest, the operator of the special waste receiving facility shall send one legible copy each of the signed special waste manifest to the Director and the generator within 30 days of the delivery of the special waste.

D. Upon discovery of a significant manifest discrepancy in the special waste manifest and the special waste received, the operator of the special waste receiving facility shall:
1. Contact the generator and special waste shipper to attempt to reconcile the discrepancy.
2. If the discrepancy cannot be resolved within 15 days after receiving the waste, submit a letter to the Director, along with the special waste manifest within five days. The letter shall describe the significant manifest discrepancy and all attempts to reconcile it.

Historical Note
Section recodified from A.A.C. R18-8-304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1305. Records

All records required by this Article shall be retained for at least three years. If notification of an enforcement action by the Department has been received, the records shall be retained until a final determination has been made in the matter or in accordance with the final determination.

Historical Note
Section recodified from A.A.C. R18-8-305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1306. Reserved

R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles

A. A generator of shredder residue shall follow sampling protocol as follows or submit to the Department for review and approval, at least two weeks prior to the sampling event, an alternative written sampling plan which is consistent with requirements set forth in "Test Methods for Evaluating Solid Waste," EPA SW-846, 3rd Edition, Volume II, Chapter Nine, Sampling Plan, Physical/Chemical Method, EPA, Office of Solid Waste and Emergency Response, Washington, D.C., September 1986, and updated November 1990, and no future editions or amendments, ("EPA Sampling Plan"), herein incorporated by reference and on file with the Department and the Office of the Secretary of State:
1. Sample collection shall be done in accordance with one of the following:
   a. Sampling procedure 1, consisting of both of the following steps:
      i. The generator shall collect samples from a shredder residue sampling pile which shall consist of the average amount of shredder residue from eight hours of operation of the shredder. The shredder residue sampling pile shall be formed into a square shape for sampling purposes. Refer to Exhibit 1.
      ii. One 2,000-gram sample shall be collected from each sample point as indicated in Exhibit 1. Samples from sample points A-1, B-1, and C-1 shall be collected from the top of the pile. Samples from sample points A-2, B-2, and C-2 shall be collected from the base of the pile. A sample from sample point C-3 shall be collected at the vertical midpoint at the center of the pile. The seven 2,000-gram samples shall be numbered consecutively. Three of the seven 2,000-gram samples shall then be chosen at random by selecting numbers from a calculator pro-

grammed to generate random numbers. The samples shall be analyzed for the constituents and at the frequencies listed in Table A of this Section.

b. Sampling procedure 2, consisting of both of the following steps:

i. The generator shall collect seven 2,000-gram samples during or immediately following the normal generation of shredder residue. For each sample, shredder residue shall be collected for 8 to 12 minutes, during which a minimum of 500 pounds shall be generated. This process shall be performed seven times to create seven 500-pound amounts. Each 500-pound amount shall be formed into a square shape for sampling purposes. Refer to Exhibit 1.

ii. Twenty 100-gram samples shall be collected from throughout each of the seven 500-pound piles generated. Upon completion of collection, all 20 samples from each of the seven 500-pound piles shall be combined together into seven separate 2,000-gram samples and numbered consecutively. Three of the seven 2,000-gram samples shall then be chosen at random by selecting numbers from a calculator programmed to generate random numbers. The samples shall be analyzed for the constituents and at the frequencies listed in Table A of this Section.

2. Each 2,000 grams of shredder residue collected shall include both large and small particles, in proportion to shredder residue generated. The generator shall use a container which is large enough to hold the entire amount of shredder residue collected from each sample point.

3. The generator shall comply with requirements for sample preservation, temperature, and holding times, as set forth in the EPA Sampling Plan.

4. Each one of the three 2,000-gram samples selected at random shall be divided into four equal 500-gram portions and a 200-gram subsample shall be taken from each of the four equal 500-gram portions. Each subsample shall then be passed through a 9.5mm screen. All particles which do not pass through the 9.5mm screen shall be hand cut until small enough to pass through the screen. All four 200-gram subsamples shall then be remixed together and redivided into four equal 200-gram portions. The following amounts shall be taken for constituent sampling:

a. 10-15 grams per 200-gram subsample for a total of 40-60 grams per 2,000-gram sample for Polychlorinated Biphenyls (PCB) analysis as set forth in subsection (A)(10).

b. 25 grams per 200-gram subsample for a total of 100 grams per sample for toxicity characteristic leaching procedure extractions for contaminants as set forth in 40 CFR 261.24, Table 1 (incorporated by reference in R18-8-261(A)), as set forth in subsection (A)(7).

c. 1.25 grams per 200-gram subsample for a total of 5 grams per 2,000-gram sample for extraction fluid determination.

5. Each constituent sample shall be put into a container. Container labeling and chain-of-custody documentation shall be consistent with the requirements in the EPA Sampling Plan.

6. The constituent samples shall be analyzed by a laboratory licensed by the Arizona Department of Health Services in accordance with A.R.S. § 36-495.

7. Of the three samples selected at random, one sample amount required by subsection (A)(4)(b) shall be analyzed for the extractable heavy metals arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver, as set forth in 40 CFR 261.24, Table 1. The remaining two samples shall each be analyzed for extractable cadmium and lead.

8. If the results of all three of the analyses for any extractable heavy metal in subsection (A)(7) are below the Regulatory Level of the Maximum Concentration of Contaminants for the Toxicity Characteristic as set forth in 40 CFR 261.24, Table 1, the simple arithmetic mean of the extractable cadmium and lead and the single analysis for the remaining six extractable heavy metals shall be used to determine if the sampled shredder residue will be classified as hazardous waste.

9. If the analyses of any one of three selected samples exceeds the regulatory level as set forth in 40 CFR 261.24, Table 1, an additional subsample from the sample in question shall be subjected to confirmation analysis. If the confirmation sample analysis totals are in excess of the regulatory level as set forth in 40 CFR 261.24, Table 1, the remaining four of the original seven samples shall be analyzed for those extractable heavy metals which exceed the regulatory level as set forth in 40 CFR 261.24, Table 1. The simple arithmetic mean of the results of all seven samples shall be used to determine if the sampled shredder residue will be classified as hazardous waste.

10. The three samples selected at random shall be analyzed for PCB concentration in the amounts required by subsection (A)(4)(a). If the samples contain concentrations of PCB less than 50 mg/kg, the simple arithmetic mean of the three samples shall be used for reporting to the Director. If any one of the three samples contains concentrations of PCB greater than 50 mg/kg, an additional subsample from the sample in question shall be subjected to confirmation analysis. If the PCB concentration for that sample exceeds 50 mg/kg, the remaining four of the original seven samples shall be analyzed for PCB, in amounts required by subsection (A)(4)(a), and the simple arithmetic mean of all the samples shall be used to determine if the sampled shredder residue will be classified as hazardous waste.

B. Shredder residue determined to be hazardous waste shall be managed in accordance with A.R.S. § 49-921 et seq. and R18-8-260 et seq.

C. The generator shall do all of the following:

1. Secure the facility to prevent unauthorized entry;
2. Cover or otherwise manage the shredder residue pile to prevent wind dispersal;
3. Place the shredder residue pile on a surface with a permeability coefficient equal to or less than 1×10^{-7} cm/s;
4. Design, construct, operate, and maintain a run-on control system capable of preventing flow onto the waste pile during peak discharge from, at a minimum, a 25-year storm;
5. Design, construct, operate, and maintain a run-off management system to collect and control at a minimum, the water volume resulting from a 24-hour, 25-year storm;
6. Provide collection and holding facilities for run-on and run-off control systems, which shall have a permeability coefficient equal to or less than 1×10^{-7} cm/s;
7. Record the date accumulation of shredder residue begins.

D. Shredder residue shall be treated, recycled, sorted, stored, or disposed at a Department-approved special waste facility approved in accordance with A.R.S. § 49-857. A facility which seeks to become a special waste facility shall submit a special waste management plan to the Department to ensure compliance with subsection (C).

E. A generator shall not store shredder residue for longer than 90 days. A special waste facility shall not store shredder residue for longer than one year.

F. The owner or operator of a special waste facility shall pay, to the Department, the fees required by A.R.S. §§ 49-855(C)(2) and 49-863 as follows:

1. $1.49 per cubic yard of uncompacted shredder residue; or
2. $3.38 per cubic yard of compacted shredder residue received; or
3. $4.50 per ton; and
4. Not more than $45,000 per generator site per year for shredder residue that is transported to a facility regulated by the Department for treatment, storage or disposal.

G. Shredder residue which has been determined to be nonhazardous pursuant to this Section shall be transported in accordance with the requirements for transportation of garbage as set forth in R18-13-310.

Historical Note
Section recodified from A.A.C. R18-8-307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

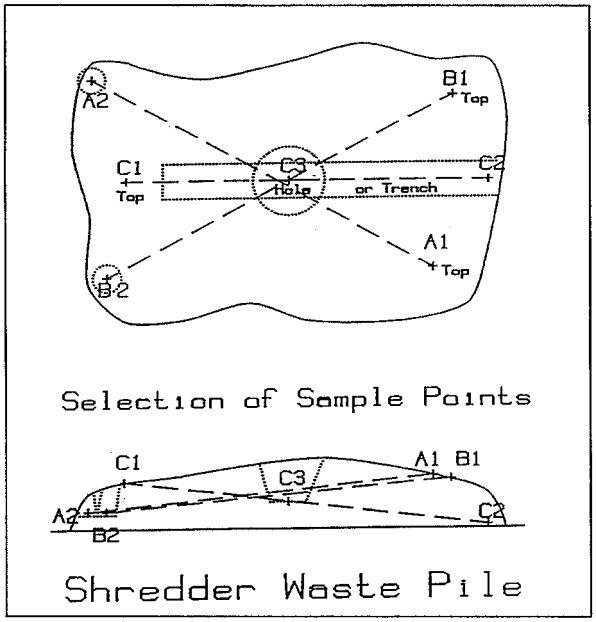
Table A. Target Analyses and Sampling Frequency

Constituents	Frequency
* TCLP Metals	Quarterly
* TCLP Volatiles	Annually
* TCLP Semi-volatiles	Annually
Polychlorinated Biphenyls (PCB)	Quarterly

* Toxicity Characteristic Leaching Procedure (TCLP)

Historical Note
Table A recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Exhibit 1. Selection of Sample Points, Shredder Waste Pile



Historical Note
Exhibit 1 recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Appendix A. Application for Arizona Special Waste Identification Number

Please refer to the instructions on the accompanying page before completing this form.	**ADEQ**	Application for Arizona Special Waste Identification Number	Date Received: (Do not write here official use only)

1. Mark Appropriate Box:

☐ Generator ☐ Shipper ☐ Receiving Facility ☐ Multiple

2. Company/Agency Name

3. Company/Agency Address (Physical Address, not P.O. Box or Route Number).

4. Company/Agency Mailing Address (If different than above).

5. Company/Agency Contact (Person to contact regarding special waste activities).
Name:

Job Title: Phone Number: ( )

6. Company/Agency Contact Address.

7. Name and Address of Company's/Agency's Legal Owner.

Phone Number: ( )

Certification: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this form and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of civil penalties.

8. Signature: 9. Name and Official Title: (Type or Print) 10. Date Signed:

11. Please list special wastes generated, transported, stored, or received by applicant.

Instructions for the Completion of the ADEQ Application for the Arizona Special Waste Identification Number.

1. Place an "X" in the appropriate box indicating which type of operation you will be performing.
2. Enter the complete company/agency name.
3. Enter the complete address. Do not use P.O. Box or Route Number.
4. Enter the complete address if it is different than the address listed in item 3.
5. Enter the name, job title, and complete phone number of the person who will act as the company/agency contact.
6. Enter the complete address of the company/agency contact listed in item 5.
7. Enter the name, complete address, and phone number of the company's/agency's legal owner.
8. Enter the signature of the person who will assume the responsibility of completion of this form and its contents.
9. Enter the name and title of the responsible person listed in item 8.
10. Enter the date that the responsible person signed the document.
11. List all special wastes that the applicant generates, transports, stores, or receives.

Historical Note

Appendix A recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Appendix B. Special Waste Manifest

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

SPECIAL WASTE MANIFEST

Generator

1. Generator's AZ ID No.

Emergency Response Notification Phone Number

3. Generator's Name and Mailing Address

Generator's Phone Number and Area Code

4. Transporter 1 Company Name and Mailing Address

Transporter's AZ ID No.

Transporter's Phone No.

5. Transporter 2 Company Name and Mailing Address

Transporter's AZ ID No.

Transporter's Phone No.

6. Primary Receiving Facility Name and Address (physical site location, if different)

Facility's AZ ID No.

Facility's Phone No.

7. Alternate Receiving Facility Name and Address (physical site location, if different)

Facility's AZ ID No.

Facility's Phone No.

8. U.S. DOT description, (if applicable) (Non-DOT regulated materials enter shipping name, physical state and description of all contents of waste	Containers No.		Total Quantity	Unit Wt/Vol
	Mark "X" if Haz Mat			

9. Additional information on transportation, treatment, storage, or disposal

10. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled and are in all respects in proper condition for transport by highway according to applicable international and governmental regulations.

Date

Printed/Typed Name

Signature

Transport

11. Transporter 1 Acknowledgment of Receipt of Materials

Date

Printed/Typed Name

Signature

12. Transporter 2 Acknowledgment of Receipt of Materials

Date

Printed/Typed Name

Signature

Facility

13. Discrepancy Indication Space

14. Facility Owner or Operator: Certification of receipt of special waste materials covered by this manifest except as noted in above item.

Date

Printed/Typed Name

Signature

Instructions for the Completion of the ADEQ Special Waste Manifest

1. Enter the generator's Arizona Identification Number in box 1.
2. Enter the Emergency Response Notification Phone Number in box 2.
3. Enter the generator's name and complete mailing address, including city, state, and zip code, along with the generator's phone number, including the area code, in box 3.
4. Enter the transporter's name, transporter's Arizona identification number, and telephone number, including the area code, in box 4.
5. Complete this box if a second transporter is to be used to transport the special waste to the receiving facility, following the instructions outlined in number 4 in box 5.
6. Enter the name, address, and physical site location of the primary special waste receiving facility. In the appropriate spaces, include the facility's Arizona identification number and the telephone number, including the area code, in box 6.
7. Enter the name, address, and physical site location of the alternate special waste receiving facility. In the appropriate spaces, include the facility's Arizona identification number and the telephone number, including the area code, in box 7.
8. Enter United States Department of Transportation description (Including proper shipping name, hazard class, and identification number, if applicable) (For all non-Department of Transportation-regulated materials, enter the proper name, physical state, and description of all contents of the waste).

   Mark an "X" in this column if waste is classified as a hazardous material.

   Container Number
   Enter the number of containers being shipped for each waste.

   Total Quantity
   Numerical value representing the number of containers multiplied by the container size. Answer will be listed in pounds, gallons, or cubic yards.

   Unit weight or volume
   P - Pounds
   G - Gallons
   Y - Cubic Yards
9. Use this space to indicate special transportation, treatment, storage, or disposal information. Emergency response telephone numbers or similar information may be included here in box 9.
10. Print or type the generator's name followed by their signature and date in box 10.
11. Print or type the primary transporter's name followed by their signature and date in box 11.
12. Print or type the secondary transporter's name followed by their signature and date in box 12.
13. Indicate significant discrepancies in this box. Significant manifest discrepancy is defined as "a difference of more than 10% by weight for bulk shipments, any variation in a piece count for batch deliveries, or an obvious difference in a special waste type is discovered by inspection or analysis between the type or amount of a special waste designated in a special waste manifest, and the type or amount received by a special waste receiving facility" in box 13.
14. Print or type the receiving facility's owner or operator name followed by their signature and date in box 14.

Historical Note

Appendix B recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS

R18-13-1401. Definitions

In addition to the definitions in A.R.S. § 49-701, the following definitions apply in this Article:

1. "Alternative treatment technology" means a treatment method other than autoclaving or incineration that achieves the treatment standards described in R18-13-1415.
2. "Approved medical waste facility plan" means the document that has been approved by the Department under A.R.S. § 49-762.04, and that authorizes the operator to accept biohazardous medical waste at its solid waste facility.
3. "Autoclaving," means using a combination of heat, steam, pressure, and time to achieve sterile conditions.
4. "Biohazardous medical waste" is composed of one or more of the following:
   a. Cultures and stocks: Discarded cultures and stocks generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.
   b. Human blood and blood products: Discarded products and materials that are saturated and/or dripping with human blood or caked with dried human blood, including items that would release blood in a liquid or semi-liquid form if compressed or broken, and items that contain serum, plasma, and other blood components. An item would be considered caked if it could release flakes or particles when handled.
   c. Human pathological wastes: Discarded organs, tissues, and body parts, including cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid and amniotic fluid, removed during surgery or other medical procedures, including autopsy,

obstetrics, or emergency care. Human pathological wastes do not include the head, spinal column, hair, nails, or teeth.

d. Medical sharps: Discarded sharps that pose a stick hazard that have come into contact with blood, blood products, or pathological waste. Examples include hypodermic needles; scalpel blades; and needles attached to tubing or syringes.

e. Research animal wastes: Animal carcasses, body parts, and bedding of animals that have been infected with agents that produce, or may produce, human infection.

f. Tattoo and body modification waste: any waste generated during the course of physically altering a human being, including tattooing, ear piercing, or any other process where a foreign object is used to cut or pierce the skin.

g. Trauma scene waste: any crime scene, accident, or trauma clean-up wastes generated by individuals or commercial entities hired to clean crime scenes or accidents, such as sharps and materials that contain human blood and blood products.

5. "Biologicals" means preparations made from living organisms or their products, including vaccines, cultures, or other biological products intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining to these activities.
6. "Biological indicator" means a representative microorganism used to evaluate treatment efficacy.
7. "CFR" means the Code of Federal Regulations.
8. "Chemotherapy waste" means any discarded material that has come in contact with an agent that kills or prevents the reproduction of malignant cells.
   a. Trace contaminated chemotherapy waste includes: masks, empty drug vials, gloves, gowns, IV tubing, empty IV bags/bottles, and spill clean-up materials.
   b. Bulk chemotherapy waste, such as full expired vials of chemotherapy drugs, is not biohazardous medical waste. Bulk chemotherapy waste may be considered hazardous wastes and must be handled according to the hazardous waste regulations if deemed a hazardous waste by the generator.
9. "Dedicated vehicle" means a motor vehicle or trailer that is pulled by a motor vehicle used by a transporter for the purpose of transporting biohazardous medical waste in conjunction with other compatible waste according to the USDOT requirements, listed at 49 CFR 177.848, revised as of October 1, 2020, and no future editions or later amendments, is incorporated by reference in this Section and on file with ADEQ.
10. "Department-approved facility" means a storage, transfer, treatment, or disposal facility that has undergone plan approval as described in R18-13-1410.
11. "Discarded drug" means any prescription medicine or over-the-counter medicine used in the diagnosis, treatment, or immunization of a human being or animal, that the generator intends to abandon. The term does not include hazardous waste or controlled substances regulated by the United States Drug Enforcement Agency.
12. "Disposal facility" means a municipal solid waste landfill that has been approved by the Department under A.R.S. § 49-762.04 to accept untreated biohazardous medical waste for disposal.
13. "Emergency situations" include those situations where following location restrictions may result in an imminent threat to human health and the environment.
14. "Facility plan" has the meaning given to it in A.R.S. § 49-701.
15. "Generator" means a person whose act or process produces biohazardous medical waste, or a discarded drug, or whose act first causes medical waste or a discarded drug to become subject to regulation.
16. "Hazardous waste" has the meaning prescribed in A.R.S. § 49-921.
17. "Health care worker" means, with respect to R18-13-1403(B)(5), a person who provides health care services at an off-site location that is none of the following: a residence, a facility where health care is normally provided, or a facility licensed by the Arizona Department of Health Services.
18. "Improper disposal of biohazardous medical waste" means the disposal by a person of untreated or inadequately treated biohazardous medical waste at any place that is not approved to accept untreated biohazardous medical waste.
19. "Independent testing laboratory" means a testing laboratory independent of oversight activities by a provider of alternative treatment technology.
20. "Medical sharps container" means a vessel that is rigid, puncture resistant, leak proof, and equipped with a cap capable of being securely closed.
21. "Medical waste," as defined in A.R.S. § 49-701, means "*any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in A.R.S. § 49-921 other than conditionally exempt small quantity generator waste.*"
22. "Medical waste treatment facility" or "treatment facility" means a solid waste facility approved by the Department under A.R.S. § 49-762.04 to accept and treat biohazardous medical waste from off-site generators.
23. "Multi-purpose vehicle" means any motor vehicle operated by a health care worker in the course of providing health care services, where the general purpose is the non-commercial transporting of people and the hauling of goods and supplies, but not solid waste. A multi-purpose vehicle is limited to hauling biohazardous medical waste generated at a location other than a hospital or clinic.
24. "Off site" means a location that does not fall within the definition of "on site" contained in A.R.S. § 49-701.
25. "Packaging" or "properly packaged" means the use of a container or a practice under R18-13-1407.
26. "Putrescible waste" means waste materials capable of being decomposed rapidly by microorganisms.
27. "Radioactive material" has the meaning under A.R.S. § 30-651.
28. "Secure" means to lock out or otherwise restrict access to unauthorized personnel.
29. "Spill" means either of the following:
    a. Any release of biohazardous medical waste from its package while in the generator's storage area.
    b. Any release of biohazardous medical waste from its package or the release of packaged biohazardous medical waste by the transporter at a place or site that is not a medical waste treatment or disposal facility.
30. "Store" or "storage" means, in addition to the meaning under A.R.S. § 49-701, either of the following:
    a. The temporary holding of properly packaged biohazardous medical waste by a generator in a desig-

nated accumulation area awaiting collection by a transporter.

b. The temporary holding of properly packaged biohazardous medical waste by a transporter or a treater at an approved medical waste storage facility or treatment facility.

31. "Technology provider" means a person that manufactures or a vendor who supplies alternative medical waste treatment technology.
32. "Tracking document" means the written instrument that signifies acceptance of biohazardous medical waste by a transporter, or a transfer, storage, treatment, or disposal facility operator.
33. "Transportation management plan" means the transporter's written plan consisting of both of the following:
    a. The procedures used by the transporter to minimize the exposure to employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
    b. The emergency procedures used by the transporter for handling spills or accidents.
34. "Transporter" means a person engaged in the business of hauling of biohazardous medical waste from the point of generation to a Department-approved storage facility or to a Department-approved treatment or disposal facility.
35. "Treat" or "treatment" means, with respect to the methods used to render biohazardous medical waste less infectious: incinerating, autoclaving, or using the alternative treatment technologies prescribed in this Article.
36. "Treated medical waste" means biohazardous medical waste that has been treated and that meets the treatment standards of R18-13-1415. Treated medical waste that requires no further processing is considered solid waste.
37. "Treater" means a person, also known as an operator, who receives solid waste facility plan approval for the purpose of operating a medical waste treatment facility to treat biohazardous medical waste that is generated off site.
38. "Treatment certification statement" means the written document provided by either a generator who treats biohazardous medical waste on site or by a treater to inform a solid waste disposal or recycling facility that biohazardous medical waste has been treated as prescribed in this Article, and therefore is no longer subject to regulation under this Article.
39. "Treatment standards" mean the levels of microbial inactivation, prescribed in R18-13-1415, to be achieved for a specific type of biohazardous medical waste.
40. "USDOT" means the United States Department of Transportation.
41. "Universal biohazard symbol" or "biohazard symbol" means a representation that conforms to the design shown in 29 CFR 1910.145(f)(8)(ii) (Office of the Federal Register, National Archives and Records Administration, July 1, 1998) and which is incorporated by reference in this rule. This incorporation does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department of Environmental Quality and the Office of the Secretary of State.
42. "Vehicle not dedicated to the transportation of biohazardous medical waste but which is engaged in commerce" means a motor vehicle or a trailer pulled by a motor vehicle whose primary purpose is the transporting of goods that are not solid waste or biohazardous medical waste and that is used by a transporter for the temporary transportation of biohazardous medical waste.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1402. Applicability

A. This Article applies to the following:
1. A generator who treats biohazardous medical waste on site, before disposing of it as treated medical waste, and to any equipment used for that purpose. Specific requirements for a generator who treats on site are prescribed in R18-13-1405.
2. A generator who contracts with a medical waste treatment facility for the purpose of treating biohazardous medical waste. Specific requirements for such a generator are prescribed in R18-13-1406.
3. A person who transports biohazardous medical waste and any motor vehicle used for that purpose.
4. A medical waste treatment facility operator, a medical waste treatment facility, and any equipment used for medical waste treatment.
5. A person who provides alternative medical waste treatment technology for the purpose of treatment, and to any technology used for treatment.
6. A person in possession of biohazardous medical waste if the waste does not meet the treatment standards in R18-13-1415.
7. An operator of a Department-approved disposal facility who accepts untreated biohazardous medical waste.
8. A person who generates medical sharps in the preparation of human remains.
9. A person who generates medical sharps in the treatment of humans or animals.
10. A generator of discarded drugs not returned to the manufacturer.

B. The requirements for biohazardous medical waste set out for collection do not apply to the manner in which the generator collects or handles material prior to that material becoming biohazardous medical waste.

C. Provisions in this Article requiring placement in Department-approved facilities do not restrict the right to place materials in facilities that are out of state or in Indian Country.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1403. Exemptions; Partial Exemptions

A. The following persons are exempt from the requirements of this Article:
1. Law enforcement personnel handling biohazardous medical waste for law enforcement purposes.
2. A person in possession of medical waste that is regulated by a state or federal agency due to its radioactive nature.
3. A person who returns unused medical sharps to the manufacturer.
4. A household generator residing in a private, public, or semi-public residence who generates biohazardous medical waste in the administration of self care or the agent of the household generator who administers the medical

care. This exemption does not apply to the facility in which the person resides if that facility is licensed by the Arizona Department of Health Services.

5. A generator that separates medical devices from the medical waste stream that are sent out for re-processing and returned to the generator.
6. A person in possession of human bodies regulated by A.R.S. Title 36.

B. The following are conditionally exempt from the requirements of this Article:

1. A person who prepares human corpses, remains, and anatomical parts that are intended for interment or cremation. However, medical sharps must be disposed of as prescribed by this Article.
2. A person who operates an emergency rescue vehicle, an ambulance, or a blood service collection vehicle in the course of providing medical services if the biohazardous medical waste is returned to the home facility for disposal. This facility is considered to be the point of generation for packaging, treatment, and disposal.
3. A person who discharges liquid and semi-liquid biohazardous medical wastes, excluding cultures and stocks, to the sanitary sewer system if the operator of the wastewater sewer system and treatment facility allows, permits, authorizes, or otherwise approves of the discharges.
4. Hazardous waste regulated by A.R.S. Title 49, Chapter 5.
5. A health care worker who uses a multi-purpose vehicle in the conduct of routine health care business other than transporting waste is exempt from the requirements of R18-13-1409 if the health care worker complies with all of the following:
   a. Packages the biohazardous medical waste according to R18-13-1407.
   b. Secures the packaged biohazardous medical waste within the vehicle so as to minimize spills.
   c. Transports the biohazardous medical waste to the place of business or to a medical waste treatment or disposal facility.
   d. Cleans the vehicle when it shows visible signs of contamination.
   e. Secures the vehicle to prevent unauthorized contact with the biohazardous medical waste.
6. A person who transports biohazardous medical waste between multiple properties separated by a public thoroughfare and which is owned or operated by the same owner or governmental entity is exempt from the requirements of R18-13-1409 if the person complies with R18-13-1403(B)(5)(a) through (e).
7. A hospital that chooses to accept medical sharps from staff physicians who generate medical sharps in a private practice is exempt from the requirement to obtain facility plan approval as long as the hospital collects medical sharps for off-site treatment or disposal.

C. The following are exempt from some of the requirements of this Article:

1. A generator who treats biohazardous medical waste on site and who accepts for treatment medical waste described in R18-13-1403(A)(4) is exempt from the requirement to obtain solid waste facility plan approval prescribed in R18-13-1410.
2. A generator who self-hauls biohazardous medical waste to a Department-approved medical waste treatment, storage, transfer, or disposal facility is exempt from the requirements of R18-13-1409 if the generator complies with R18-13-1403(B)(5)(a) through (e).

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1404. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Repealed by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1405. Biohazardous Medical Waste Treated On Site

A. A person who treats biohazardous medical waste on site shall use incineration, autoclaving, or an alternative medical waste treatment method that meets the treatment standards prescribed in R18-13-1415.

B. A generator who uses:

1. Incineration shall follow the requirements of subsections (C), (F), (G), and (H),
2. Autoclaving shall follow the requirements of subsections (D), (F), (G) and (H), or
3. An alternative treatment method shall follow the requirements of subsections (E), (F), (G), and (H).

C. A generator who incinerates biohazardous medical waste on site shall comply with all of the following requirements:

1. Obtain a permit if required by the local or state air quality agency having jurisdiction.
2. Reduce the biohazardous medical waste, excluding metallic items, into carbonized or mineralized ash.
3. Determine whether incinerator ash is hazardous waste as required by hazardous waste rules promulgated under A.R.S. Title 49, Chapter 5.
4. Dispose of the non-hazardous waste incinerator ash at a Department-approved municipal solid waste landfill.

D. A generator who autoclaves biohazardous medical waste on site shall comply with all of the following requirements:

1. Further process by grinding, shredding, or any other process, any recognizable animals and human tissue, organs, or body parts, to render such waste non-recognizable and ensure effective treatment.
2. Operate the autoclave at the manufacturer's specifications appropriate for the quantity and density of the load.
3. Keep records of operational performance levels for six months after each treatment cycle. Operational performance level recordkeeping includes all of the following:
   a. Duration of time for each treatment cycle.
   b. The temperature and pressure maintained in the treatment unit during each cycle.
   c. The method used to determine treatment parameters in the manufacturer's specifications.
   d. The method in manufacturer's specifications used to confirm microbial inactivation and the test results.
   e. Any other operating parameters in the manufacturer's specifications for each treatment cycle.
4. Keep records of equipment maintenance for the duration of equipment use that include the date and result of all equipment calibration and maintenance.

E. A generator who uses an alternative treatment method on site shall comply with all of the following requirements:

1. Use only alternative treatment methods registered under R18-13-1414.
2. Further process by grinding, shredding, or any other process, any recognizable animals and human tissue, organs,

or body parts, to render this waste non-recognizable and ensure effective treatment.

3. Follow the manufacturer's specifications for equipment operation.
4. Supply upon request all of the following:
   a. The Departmental registration number for the alternative medical waste treatment technology and the type of biohazardous medical waste that the equipment is registered to treat.
   b. The equipment specifications that include all of the following:
      i. The operating procedures for the equipment that enable the treater to comply with the treatment standards described in this Article for the type of waste treated.
      ii. The instructions for equipment maintenance, testing, and calibration that enable the treater to comply with the treatment standards described in this Article for the type of waste treated.
5. Maintain a training manual regarding the proper operation of the equipment.
6. Maintain a treatment record consisting of a log of the volume of medical waste treated and a schedule of calibration and maintenance performed under the manufacturer's specifications.
7. Maintain treatment records for six months after the treatment date for each load treated.
8. Maintain the equipment specifications for the duration of equipment use.

F. A generator shall do all of the following:
1. Package the treated medical waste according to the waste collection agency's requirements;
2. Attach to the package or container a label, placard, or tag with the following words: "This medical waste has been treated as required by the Arizona Department of Environmental Quality standards" before placing the treated medical waste out for collection as a general solid waste. The generator shall ensure that the treated medical waste meets the standards of R18-13-1415.
3. Upon request of the solid waste collection agency or municipal solid waste landfill, provide a certification that the treated medical waste meets the standards of R18-13-1415.
4. Make treatment records available for Departmental inspection upon request.

G. A generator of medical sharps shall handle medical sharps as prescribed in R18-13-1419.

H. A generator of chemotherapy waste, cultures and stocks, or animal waste shall handle that waste as prescribed in R18-13-1420.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1406. Biohazardous Medical Waste Transported Off Site for Treatment

A. A generator of biohazardous medical waste shall cause the waste to first be packaged as prescribed in this Article and shall subsequently either self-haul or store the waste as provided under R18-13-1408 and set the waste out for collection by a properly licensed transporter under R18-13-1409.

B. A generator shall obtain a copy of the tracking document signed by the transporter signifying acceptance of the biohazardous medical waste. A generator shall keep a copy of the tracking document for the period required under the USDOT requirements, as listed in 49 CFR 172.201, revised as of October 1, 2020, and no future editions or later amendments, is incorporated by reference in this Section and on file with ADEQ. The tracking document shall contain all of the following information:
1. Name and address of the generator, transporter, and medical waste treatment, storage, transfer, or disposal facility, as applicable.
2. Quantity of biohazardous medical waste collected by weight, volume, or number of containers.
3. Identification number attached to bags or containers, as specified as by the USDOT requirements, as listed in 49 CFR 172.300 through 172.338, revised as of October 1, 2020, and no future editions or later amendments, is incorporated by reference in this Section and on file with ADEQ.
4. Date the biohazardous medical waste is collected.

C. A generator of chemotherapy waste, cultures and stocks, or animal waste shall handle the waste as prescribed in R18-13-1420.

D. A generator of medical sharps shall handle the waste as prescribed in R18-13-1419.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1407. Non-Sharps Packaging

A. A generator who sets biohazardous medical waste that does not include sharps out for collection for off-site treatment or disposal shall package the biohazardous medical waste in either of the following:
1. A red disposable plastic bag that is:
   a. Leak resistant,
   b. Impervious to moisture,
   c. Of sufficient strength to prevent tearing or bursting under normal conditions of use and handling,
   d. Sealed to prevent leakage during transport, and
   e. Placed in a secondary container. This container shall be constructed of materials that will prevent breakage of the bag in storage and handling during collection and transportation and bear the universal biohazard symbol. The secondary container may be either disposable or reusable.
2. A reusable container that bears the universal biohazard symbol and that is:
   a. Leak-proof on all sides and bottom, closed with a fitted lid, and constructed of smooth, easily cleanable materials that are impervious to liquids and resistant to corrosion by disinfection agents and hot water, and
   b. Used for the storage or transport of biohazardous medical waste and cleaned after each use unless the inner surfaces of the container have been protected by disposable liners, bags, or other devices removed with the waste. "Cleaning" means agitation to remove visible particles combined with one of the following:
      i. Exposure to hot water at a temperature of at least 180° F for a minimum of 15 seconds.
      ii. Exposure to an EPA-approved chemical disinfectant used under established protocols and regulations.
      iii. Any other method that the Department determines is acceptable, if the determination of

acceptability is made in advance of the cleaning.

B. A generator shall handle any container used for the storage or transport of biohazardous medical waste that is not capable of being cleaned as described in subsection (A)(2)(b), or that is disposable packaging, as biohazardous medical waste.

C. A generator shall not use reusable containers described in subsection (A)(2) for any purpose other than the storage of biohazardous medical waste.

D. A generator shall not reuse disposable packaging and liners and shall manage such items as biohazardous medical waste.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1408. Storage

A. A generator may place a container of biohazardous medical waste alongside a container of solid waste if the biohazardous medical waste is identified and not allowed to co-mingle with the solid waste. The storage area shall not be used to store substances for human consumption or for medical supplies.

B. Once biohazardous medical waste has been packaged for shipment off site, a generator shall provide a storage area for biohazardous medical waste until the waste is collected and shall comply with both of the following requirements:

1. Secure the storage area in a manner that restricts access to, or contact with the biohazardous medical waste to authorized persons.
2. Display the universal biohazard symbol and post warning signs worded as follows for medical waste storage areas: (in English) "CAUTION -- BIOHAZARDOUS MEDICAL WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT" and (in Spanish) "PRECAUCION -- ZONA DE ALMACENAMIENTO DE DESPERDICIOS BIOLOGICOS PELIGROSOS -- PROHIBIDA LA ENTRADA A PERSONAS NO AUTORIZADAS."

C. Beginning at the time the waste is set out for collection, a generator who stores biohazardous medical waste shall comply with all of the following requirements:

1. Putrescible biohazardous medical waste may be kept unrefrigerated up to 72 hours if it would not otherwise cause odor detectable beyond the property line or attract vermin.
2. Refrigerate at 40° F or less from hour 72 through day 90 putrescible biohazardous medical waste kept for up to 90 days.
3. Nonputrescible biohazardous medical waste may be kept unrefrigerated for up to 90 days.
4. Store biohazardous medical waste for 90 days or less unless the generator has obtained facility plan approval under A.R.S. § 49-762.04 and is in compliance with the design and operational requirements prescribed in R18-13-1412.
5. Keep the storage area free of visible contamination.
6. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals. A generator shall ensure that the waste does not provide a breeding place or a food source for insects or rodents.
7. Handle spills by re-packaging the biohazardous medical waste, re-labeling the containers and cleaning any soiled surface as prescribed in R18-13-1407(A)(2)(b).
8. Notwithstanding subsections (C)(1) and (2), a generator shall minimize the off-site migration of odors and the presence of vermin. If the Department determines that a generator has not acted or adequately addressed odors or vermin, the Department shall require the waste to be removed or refrigerated at 40° F or less.

D. Trace chemotherapy waste shall be clearly identified as such by its label.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1409. Transporter License; Fees; Transportation

A. A transporter shall obtain a transporter license from the Department as provided under subsections (B) and (C) in addition to possessing a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.

B. A transporter license is valid for five years after issuance. To renew the license, the licensee shall submit an application under subsection (B)(1) no later than 60 days prior to the license's expiration and shall pay the fee provided in subsection (B)(2). With each application submitted for approval, the applicant shall remit an initial transporter license application fee in accordance with Table 1. Fee Table - Transporter License Fees; Frequency of Application for Transporter License. This Table also lists the maximum fees that the Department will bill the applicant. All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

1. To apply for or to renew a transporter license, an applicant shall submit all of the following in a Department-approved format:
   a. The name, address, and telephone number of the transportation company or entity.
   b. All owners' names, addresses, and telephone numbers.
   c. All names, addresses, and telephone numbers of any agents authorized to act on behalf of the owner.
   d. A copy of either the certificate of disclosure required by A.R.S. § 49-109 or a written acknowledgment that this disclosure is not required.
   e. Photocopies or other evidence of the issuance of a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
   f. A copy of the transportation management plan as defined in R18-13-1401.
   g. A list identifying each dedicated vehicle.
   h. The initial transporter application license fee indicated in Table 1. Fee Table - Transporter License Fees; Frequency of Application for Transporter License.
2. The new or renewal application license fee shall be calculated by multiplying the hourly rate of $122 by the number of personnel hours involved in inspecting each transporting vehicle, evaluating the application, and approving the license, which amount shall be subtracted from the initial application license fee on deposit. Any remaining surplus of the initial application license fee on deposit shall be returned to the applicant. Any cost that

exceeds the initial application license fee on deposit shall be billed to the applicant, but shall not exceed the maximum.

3. The Department may only issue a transporter license, including a renewal, if all of the items in subsection (B)(1)(a) through (h) have been received and determined to be correct and complete, and a Department inspection of each transporting vehicle shows that the vehicle is in compliance with this Article.

C. Transporters shall pay by the invoice due date an annual fee of $750 for each calendar year following payment of the new or renewal application license fee and subsequent years in which a renewal application license fee is not charged and paid, such as in Table 2. Fee Table, Transporters Annual Fee.

D. Amendments. After issuance, the licensee shall submit to the Department any change to the information listed in subsections (B)(1)(a) through (h) within 30 days of its occurrence. Vehicles may only be added to the license after a Department inspection shows that the vehicle is in compliance with this Article. Amendments adding vehicles to the license shall be processed after payment of inspection fees and other expenses at the rate listed in subsection (B)(2), except that the application fee shall be $100 and the maximum fee $5,000.

E. An applicant who disagrees with the final bill received from the Department for the amendment, issuance, renewal or denial of a transporter license or vehicle inspections may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.

F. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. §§ 41-1092 through 1092.12.

G. A person who transports biohazardous medical waste shall maintain in each transporting vehicle at all times a transportation management plan.

H. A transporter who accepts biohazardous medical waste from a generator shall transmit electronically or leave a physical copy of the tracking document described in R18-13-1406(B) with the person from whom the waste is accepted. A transporter shall ensure that a copy of the tracking document accompanies the person who has physical possession of the biohazardous medical waste. Upon delivery to a Department-approved transfer, storage, treatment, or disposal facility, the transporter shall obtain a copy of the tracking document, signed by a person representing the receiving facility, signifying acceptance of the biohazardous medical waste.

I. A transporter who transports biohazardous medical waste in a dedicated vehicle shall ensure that the cargo box, trailer, or compartment can be secured to limit access to authorized persons at all times except during loading and unloading. In addition, the cargo box, trailer, or compartment shall be constructed in compliance with one of the following:

1. Have a fully enclosed, leak-proof cargo compartment consisting of a floor, sides, and a roof that are made of a non-porous material impervious to biohazardous medical waste and physically separated from the driver's compartment.
2. Haul a fully enclosed, leak-proof cargo box made of a non-porous material impervious to biohazardous medical waste.
3. Tow a fully enclosed leak-proof trailer made of a non-porous material impervious to biohazardous medical waste.

J. A person who transports biohazardous medical waste in a vehicle not dedicated to the transportation of biohazardous medical waste, but that is used at least once weekly for a month shall comply with the following:

1. Subsections (A) and (G) through (K).
2. Clean the vehicle as prescribed in R18-13-1407(A)(2)(b) before it is used for another purpose.

K. A transporter of biohazardous medical waste shall comply with all of the following:

1. Accept only biohazardous medical waste packaged as prescribed in R18-13-1407.
2. Accept biohazardous medical waste only after providing the generator with a signed tracking document as prescribed in R18-13-1406(B), and keep a copy of the tracking document for the period required under the USDOT requirements, as listed in 49 CFR 172.201.
3. Deliver biohazardous medical waste to a Department-approved biohazardous medical waste storage, transfer, treatment, or disposal facility within the following timeframes:
   a. 72 hours of collection, if putrescible and unrefrigerated; or
   b. 90 days of collection, if putrescible and refrigerated at 40° F or less from hour 72 through day 90; or
   c. 90 days of collection, if nonputrescible and unrefrigerated.
4. Not hold biohazardous medical waste longer than specified under subsection (K)(3) unless the vehicle is parked at a Department-approved facility.
5. Except in emergency situations, not unload, reload, or transfer the biohazardous medical waste to another vehicle in any location other than a Department-approved facility. Combination vehicles or trailers may be uncoupled and coupled to another cargo vehicle or truck trailer as long as the biohazardous medical waste is not removed from the cargo compartment.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

Table 1. Fee Table - Transporter License Fees; Frequency of Application for Transporter License

Transporter License Fees

	Initial	Maximum
New Application	$2,000	$20,000
Renewal Application	$2,000	$20,000
Amendment Application	$100	$5,000

Frequency of Application for Transporter License

Year	Type of Application	Frequency
1	New	Once
6, 11, 16, etc.	Renewal	Every 5th Year

Historical Note

Table 1. Fee Table, Transporter License Fees; Frequency of Application for Transporter License Fees made by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

Table 2. Fee Table - Transporter Annual Fee

Years	Amount
2, 3, 4, 5, 7, 8, 9, 10, etc.	$750

Historical Note

Table 2. Fee Table, Transporter Annual Fee made by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1410. Storage, Transfer, Treatment, and Disposal Facilities; Facility Plan Approval

A. A person shall obtain solid waste facility plan approval from the Department as prescribed in A.R.S. § 49-762.04 to construct any facility that will be used to store, transfer, treat, or dispose of biohazardous medical waste that was generated off site. Plan approval shall be obtained before starting construction of the medical waste treatment or disposal facility. This requirement also applies to solid waste facilities for which an operator self-certifies under A.R.S. § 49-762.05, if the facility also will receive biohazardous medical waste.

B. If an air quality permit is required for the facility under A.R.S. Title 49, Chapter 3, the person shall include evidence of that air quality permit, or evidence of an air quality permit application with the application for solid waste facility plan approval.

C. A person applying for facility plan approval shall ensure that the plan contains information demonstrating how the plan will comply with this Article.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1411. Storage and Transfer Facilities; Design and Operation

An operator of a storage facility or transfer facility shall comply with all of the following design and operation requirements:

1. Design the facility so that biohazardous medical waste is always handled and stored separately from other types of solid waste if accepted at the facility.
2. Display prominently the universal biohazard symbol as prescribed in R18-13-1401.
3. Construct the storage area from smooth, easily cleanable non-porous material that is impervious to liquids and resistant to corrosion by disinfecting agents and hot water.
4. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals.
5. Specify in the application for facility plan approval the maximum storage time that biohazardous medical waste will remain at the facility. If putrescible biohazardous medical waste will be stored for more than 72 hours, the operator shall equip the facility with a refrigerator to refrigerate putrescible biohazardous medical waste. The operator of the facility shall maintain the temperature in the refrigerator at 40° F or less.
6. Accept biohazardous medical waste only if it is accompanied by the tracking document. The operator shall sign the tracking document and keep a copy of the acceptance documentation for the period required under the USDOT requirements, as listed in 49 CFR 172.201.
7. Accept biohazardous medical waste if it is packaged as described in R18-13-1407. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a transfer facility operator shall do one of the following:
   a. Reject the waste and return it to the transporter or self-hauling generator.
   b. Accept the waste and immediately repackage it as prescribed in R18-13-1407(A).
8. Clean the storage area daily. "Clean" means to remove visible particles combined with one of the following:
   a. Exposure to hot water at a temperature of at least 180° F for a minimum of 15 seconds.
   b. Exposure to an EPA-approved chemical disinfectant used under established protocols and regulations.
   c. Any other method that the Department determines is acceptable, if the determination of acceptability is made in advance of the cleaning.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1412. Treatment Facilities; Application Requirements; Design and Operation

A. An operator who applies for facility plan approval shall comply with subsections (A)(1) and (2) as well as all of the requirements in subsections (B)(1) through (11):

1. Submit to the Department the following documentation:
   a. Equipment specifications that identify the proper type of medical waste to be treated in the equipment and any design or equipment restrictions.
   b. Manufacturer's specifications and operating procedures for the equipment that describe the type and volume of waste to be treated, monitoring data of the treatment process, and calibration and testing of the equipment, providing specific details about the capability of the equipment to achieve the treatment standards prescribed in R18-13-1415.
   c. Instructions for equipment maintenance, testing, and calibration that ensure the equipment achieves the treatment standards prescribed in R18-13-1415.
   d. Training manual for the equipment.
   e. Written certification from the manufacturer stating that the equipment, when operated properly, is capable of achieving the treatment standards prescribed in R18-13-1415.

2. Submit to the Department and have readily available at the facility, an operations procedure manual describing how the waste will be handled from the time it is accepted by the treater through the treatment process and final disposition of the treated waste. The operations procedure manual shall include all of the following:
   a. Provisions for treating biohazardous medical waste within 72 hours of receipt or refrigerating at 40° F or less upon determination that treatment or disposal will not occur within 72 hours. Nonputrescible biohazardous medical waste that is not immediately treated may be stored for up to 90 days unrefrigerated.
   b. A contingency plan if the treatment equipment is out of service for an extended period of time. The plan shall address the manner and length of time for storage of the waste. An operator shall not store biohazardous medical waste more than 90 days. The plan shall be based on the capacity of the treatment equipment to treat all waste at the facility, including any backlog of stored waste and any new waste intake. If the 90-day time-frame will be exceeded, the operator shall either stop accepting waste until the backlog is treated, or contract with another treatment facility for treating the waste.
   c. Procedures for handling hazardous chemicals, radioactive waste, and chemotherapy waste. The plan shall provide for scanning biohazardous medical waste with a Geiger counter and handling waste that measures above background level in a manner that complies with state and federal law.

B. An operator of a Department-approved facility shall comply with all of the following:
1. Have readily accessible written procedures stating that biohazardous medical waste is to be accepted from a transporter only if the waste is accompanied by a tracking document, and written procedures that require compliance with both of the following:
   a. The treater or the treater's authorized agent shall sign the tracking document and keep a copy of the acceptance documentation for the period required under the USDOT requirements, as listed in 49 CFR 172.201.
   b. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a treater shall do one of the following:
      i. Reject the waste and return it to the transporter or self-hauling generator.
      ii. Accept the waste and transfer it directly from the transporting vehicle to the treatment processing unit.
      iii. If the waste will not be treated immediately, repackage the waste for storage.
2. Assure that the facility is designed to meet both of the following requirements:
   a. Any floor or wall surface in the processing area of the facility which may come into contact with biohazardous medical waste is constructed of a smooth, easily cleanable non-porous material that is impervious to liquids.
   b. The floor surface in the treatment and storage area either has a curb of sufficient height to contain spills or slopes to a drain that connects to an approved sanitary sewage system, septic tank system, or collection device.
3. Store biohazardous medical waste as required in R18-13-1408.
4. Comply with all of the following if the treatment method is incineration:
   a. Reduce the incinerated medical waste, excluding metallic items, into carbonized or mineralized ash by incineration.
   b. Determine whether the ash is hazardous waste as required under R18-8-262.
5. Conduct any autoclaving according to the manufacturer's specifications for the unit.
6. Use only alternative medical waste treatment methods that achieve the treatment standards in R18-13-1415(A).
7. Treat animal waste, chemotherapy waste, and cultures and stocks as prescribed in R18-13-1420.
8. Render medical sharps incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard.
9. Keep records of equipment maintenance and operational performance levels for three years. The records shall include the date and result of all equipment calibration and maintenance. Operational performance level records shall indicate the duration of time for each treatment cycle and:
   a. For steam treatment and microwaving treatment records, both the temperature and pressure maintained in the treatment unit during each cycle and the method used for confirmation of temperature and pressure.
   b. For chemical treatment, a description of the solution used.
   c. For incineration, the temperature is maintained in the treatment unit during operation.
   d. Any other operating parameters in the manufacturer's specifications.
   e. A description of the treatment method used and a copy of the maintenance test results.
10. Not open a sealed biohazardous medical waste container prior to treatment unless opening the container is required to treat the contents. Transfer of the entire contents, when performed as part of the treatment process, is permitted.
11. Clean the storage and treatment areas as necessary to protect the public health and employee health and safety.

C. The treater shall make treatment records available for Departmental inspection upon request.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1413. Changes to Approved Medical Waste Facility Plans

A. As required by A.R.S. § 49-762.06, before making any change to an approved facility plan, a facility owner or operator shall submit a notice to the Department stating the type of change requested, including but not limited to:
1. A Type I change to an approved medical waste facility plan is a change not described in subsections (A)(2), (3), or (4).
2. A Type II change to an approved medical waste facility plan is a change in which treatment equipment is replaced with equal or like equipment, resulting in either no increase to treatment capacity or the addition of equipment that is not directly used in the treatment process.

3. A Type III change to an approved medical waste facility plan is a change described by one of the following:
   a. Treatment equipment is added, resulting in less than a 25% increase in treatment capacity.
   b. The storage area is enlarged resulting in less than a 25% increase in storage capacity.
   c. Treatment technology is changed.
4. A Type IV change to an approved medical waste facility plan is a change described by one of the following:
   a. Treatment equipment is added, resulting in a 25% or more increase in treatment capacity.
   b. The storage area is enlarged resulting in a 25% or more increase in storage capacity.
   c. Treatment equipment is added that requires an environmental permit.
   d. An expansion of the treatment facility onto land not previously described in the approved plan.

B. As required by A.R.S. § 49-762.06, a treatment facility operator who has identified a change under subsection (A) shall comply with one of the following:
1. For a Type I change, make the change without notice to, or approval by the Department.
2. For a Type II change, before making any change, provide written notification that describes the change to the Department. The addition of refrigeration units only for compliance with this Article is a Type II change for which no Departmental approval is required.
3. For a Type III or Type IV change, submit an amended plan to the Department for approval before making any change. Departmental approval is required prior to making any change.

C. An owner or operator of an existing municipal solid waste landfill who intends to accept untreated biohazardous medical waste shall submit a notice of a Type III change and an amended facility plan.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1414. Alternative Medical Waste Treatment Methods: Registration and Equipment Specifications

A. A manufacturer or its agent who applies for alternative medical waste treatment method registration shall submit to the Department all of the following:
1. The manufacturer or company name and address.
2. The name, address, and telephone number of the person who submits the application.
3. A description of the alternative medical waste treatment method.
4. A list of any other states in which the treatment method is used, including a copy of any state approvals.
5. A description of by-products generated as result of the alternative treatment method.
6. A certification statement that the contents of the application are true and accurate to the knowledge and belief of the applicant.
7. Written documentation demonstrating that the alternative medical waste treatment method is capable of compliance with the treatment standards in this Article for the type of waste treated. The manufacturer shall employ a laboratory independent of any oversight activities by the manufacturer to provide this analysis.
8. The manufacturer's equipment specifications for the alternative medical waste treatment method being registered, including all of the following:
   a. Unit model number, or serial number.
   b. Equipment specifications that identify the proper type of biohazardous medical waste to be treated by the equipment and any design or equipment restrictions.
   c. Operating procedures for the equipment that ensure the equipment complies with the treatment standards prescribed in this Article for the type of waste treated.
   d. Instructions for equipment maintenance, testing, and calibration that ensure the equipment complies with the treatment standards prescribed in this Article for the type of waste treated.
9. Written documentation of registration if required by A.R.S. § 3-351.

B. The Department shall make a determination whether to approve the registration application. If the Department approves the application, it shall issue to the applicant a certification of registration containing an alternative medical waste treatment method registration number. Only an alternative technology method with a valid Department issued registration number meets the requirements of this Article.

C. If documentation of Departmental registration is not on file with a generator utilizing alternative medical waste treatment technology, the Department shall classify biohazardous medical waste treated using the unregistered alternative treatment technology as untreated biohazardous medical waste.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1415. Treatment Standards, Quantification of Microbial Inactivation and Efficacy Testing Protocols

A. A treater using an alternative treatment technology shall ensure that treatment achieves either of the following treatment standards:
1. A 6 $\log_{10}$ inactivation in the concentration of vegetative microorganisms.
2. A 4 $\log_{10}$ inactivation in the concentration of *Bacillus stearothermophilus* or *Bacillus subtilis* as is appropriate to the technology.

B. A treater utilizing an alternative treatment method shall conduct efficacy studies to demonstrate that the treatment mechanisms are capable of achieving the standards in subsection (A) through either of the following:
1. Mycobacterial species used as indicators of vegetative microorganisms:
   a. *Mycobacterium phlei*, or
   b. *Mycobacterium bovis* (BOG) (ATCC 35743)
2. Spore suspensions of one of the following two bacterial species, as appropriate to the technology, used as biological indicators in efficacy tests of thermal, chemical, and irradiation treatment systems. Studies shall demonstrate a 4 $\log_{10}$ reduction in the concentration of viable spores, through the use of an initial inoculum suspension of 5 $\log_{10}$ or greater of:
   a. *Bacillus stearothermophilus* (ATCC 7953), or
   b. *Bacillus subtilis* (ATCC 19659).

C. A treater utilizing an alternative treatment method shall quantify microbial inactivation as follows:

1. Microbial inactivation, or "kill" efficacy is equated to "Log_{10} Kill" that is defined as the difference between the logarithms of the number of viable test microorganisms before and after treatment. This definition is stated as:
   $Log_{10}Kill = Log_{10}(cfu/g\ "I") - Log_{10}(cfu/g\ "R")$
   where:
   $Log_{10}Kill$ is equivalent to the term Log_{10} reduction,
   "I" is the number of viable test microorganisms introduced into the treatment unit,
   "R" is the number of viable test microorganisms recovered from the treatment unit, and
   "cfu/g" are colony forming units per gram of waste solids.
2. For those treatment processes that can maintain the integrity of the biological indicator carrier of the desired microbiological test strain, biological indicators of the required strain and concentration may be used to demonstrate microbial inactivation. Quantification is evaluated by growth or no growth of the cultured biological indicator.
3. For those treatment mechanisms that cannot ensure or provide integrity of the biological indicator, quantitative measurement of microbial inactivation requires a two-step approach: Step 1 "Control" and Step 2 "Test". The purpose of Step 1 is to account for the reduction of test microorganisms due to loss by dilution or physical entrapment.
   a. Step 1:
      i. Use microbial cultures of a predetermined concentration necessary to ensure a sufficient microbial recovery at the end of this step.
      ii. Add suspension to a standardized medical waste load that is to be processed under normal operating conditions without the addition of the treatment agent (that is, heat, chemicals).
      iii. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.
      iv. Plate the recovered microorganism suspensions to quantify microbial recovery. The number of viable microorganisms recovered serves as a baseline quantity for comparison to the number of recovered microorganisms from wastes processed with the treatment agent.
      v. The required number of recovered viable indicator microorganisms from Step 1 must be equal to or greater than the number of microorganisms required to demonstrate the prescribed Log reduction, either a 6 Log_{10} reduction for vegetative microorganisms or a 4 Log_{10} reduction for bacterial spores. This can be defined by the following equation:
         $Log_{10}RC = Log_{10}IC - Log_{10}NR$
         or
         $Log_{10}NR = Log_{10}IC - Log_{10}RC$
         where:
         $Log_{10}RC$ is greater than 6 for vegetative microorganisms and greater than 4 for bacterial spores and where:
         $Log_{10}RC$ is the number of viable "control" microorganisms in colony forming units per gram of waste solids recovered in the non-treated, processed waste residue;
         $Log_{10}IC$ is the number of viable "control" microorganisms in colony forming units per gram of waste solids introduced into the treatment unit;
         $Log_{10}NR$ is the number of "control" microorganisms in colony forming units per gram of waste solids which were not recovered in the non-treated, processed waste residue. $Log_{10}NR$ represents an accountability factor for microbial loss.
   b. Step 2:
      i. Use microbial cultures of the same concentration as in Step 1.
      ii. Add suspension to the standardized medical waste load that is to be processed under normal operating conditions with the addition of the treatment agent.
      iii. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.
      iv. Plate recovered microorganism suspensions to quantify microbial recovery.
      v. From data collected from Step 1 and Step 2, the level of microbial inactivation, "Log_{10} Kill", is calculated by employing the following equation:
         $Log_{10}Kill = Log_{10}IT - Log_{10}NR - Log_{10}RT$
         where:
         $Log_{10}Kill$ is equivalent to the term Log_{10} reduction;
         $Log_{10}IT$ is the number of viable "Test" microorganisms in colony forming units per gram of waste solids introduced into the treatment unit. $Log_{10}IT = Log_{10}IC$;
         $Log_{10}NR$ is the number of "Control" microorganisms in colony forming units per gram of waste solids which were not recovered in the non-treated, processed waste residue;
         $Log_{10}RT$ is the number of viable "Test" microorganisms in colony forming units per gram of waste solids recovered in treated, processed waste residue.

D. A treater shall employ the appropriate methodology to determine efficacy of the treatment technology following the protocols in subsection (C) that are congruent with the treatment method.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1416. Recycled Materials

A. Once a generator places biohazardous medical waste in a red bag as required in R18-13-1407, a person shall not remove any of the biohazardous medical waste from the bag until the biohazardous medical waste has been treated as required in R18-13-1415.

B. A generator of biohazardous medical waste intending to recycle any portion of the biohazardous medical waste shall segregate that portion of biohazardous medical waste from the portion of biohazardous medical waste that will not be recycled. The generator shall do either of the following:
1. Treat the biohazardous medical waste intended for recycling as required in R18-13-1415 before sending the treated medical waste to a recycler.

2. Follow the requirements in R18-13-1406, R18-13-1407, and R18-13-1408, before either contracting with a transporter to haul or self-hauling the biohazardous medical waste to a treatment facility for treatment. After treatment, the treated medical waste may be sent to a recycler.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1417. Disposal Facilities: Design and Operation
An operator of a municipal solid waste landfill that accepts untreated biohazardous medical waste shall comply with all of the following in design and operational requirements:
1. Accept biohazardous medical waste only if packaged according to R18-13-1407.
2. Keep the biohazardous medical waste disposal area separate from the general purpose disposal area.
3. Clearly label the biohazardous medical waste disposal area, informing persons that the disposal area contains untreated medical waste.
4. Not drive directly over deposited medical waste. The operator shall achieve compaction by first spreading a layer of soil that is sufficiently thick to prevent compaction equipment from coming into direct contact with the waste, or dragging waste over the area.
5. Cover the biohazardous medical waste with 6 inches of compacted soil at the end of the working day or more often as necessary to prevent vector breeding and odors.
6. Not allow salvaging of untreated biohazardous medical waste from the landfill.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).
Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1418. Discarded Drugs
Discarded drugs that are not hazardous waste, not returned to the manufacturer, and not segregated and labeled on site for transport to a treatment facility shall be destroyed on site by the generator of such drugs by any method that prevents the drugs' use prior to placing the waste out for collection. If federal or state law prescribes a specific method for destruction of discarded drugs, the generator shall comply with that law.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).
Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1419. Medical Sharps
A. Medical sharps shall be handled as follows:
1. A generator who treats biohazardous medical waste on site shall place medical sharps in a sharps container after rendering them incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard. Medical sharps encapsulated or processed in this manner are considered to be solid waste.
2. A generator who ships biohazardous medical waste off site for treatment shall either:
   a. Place medical sharps in a medical sharps container and follow the requirements of R18-13-1406, or
   b. Package and send medical sharps to a treatment facility via a mail-back system as prescribed by the instructions provided by the mail-back system operator. The generator shall retain proof of shipping.

B. Notwithstanding subsections (A)(1) and (2), the following syringes do not have to be placed in a medical sharps container:
1. Syringes that have never had a needle (sharp) attached.
2. Syringes where a needle or sharp had been attached and has been separated from the syringe so that no stick or puncture hazard remains with the syringe.

C. Syringes that are exempted by subsections (B)(1) and (2) from being placed in a medical sharps container are not biohazardous medical waste, and may be treated as a solid waste, if they are not composed of biohazardous items listed in R18-13-1401(4) and do not contain discarded drugs or another regulated substance.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).
Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1420. Additional Handling Requirements for Certain Wastes
A. A person who treats the following biohazardous medical waste categories shall meet the following additional requirements:
1. Cultures and stocks shall be incinerated, autoclaved, or treated by an alternative medical waste treatment method that meets the treatment standards set forth in R18-13-1415(A). If cultures and stocks are shipped off site for treatment or disposal, they shall be packaged inside a watertight primary container with absorbent packing materials. The primary container shall be placed inside a watertight secondary inner container that is then placed inside an outer container with sufficient cushioning material to prevent shifting between the secondary inner container and the outer container. If federal or state law prescribes specific requirements for packaging and transporting this waste, the treater shall comply with that law.
2. Trace chemotherapy waste shall be incinerated or disposed of in either an approved solid waste or hazardous waste disposal facility.
3. Experimental or research animal waste shall be handled as follows:
   a. Autoclave bedding on site or package as described in R18-13-1407 for off-site treatment or landfilling.
   b. Incinerate animal carcasses on site, or if taken off site for treatment, comply with one of the following requirements:
      i. Package the waste in a leakproof, covered container, label the contents and send to an incinerator or a Department-approved landfill, or
      ii. If treated by a method other than incineration, pre-process by grinding, then treat by a method that achieves the standards of R18-13-1415(A).

B. If a treater uses grinding in combination with another treatment method described in this Article, the treater shall conduct it in a closed system to prevent humans from being exposed to the release of the waste into the environment. If grinding is used for medical sharps, the grinding shall render the medical sharps incapable of creating a stick hazard.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).
Amended by final rulemaking at 27 A.A.R. 2801

(December 3, 2021), effective January 4, 2022 (Supp. 21-4).

ARTICLE 15. RECODIFIED

Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

R18-13-1501. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-902 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1002 (Supp. 01-4).

R18-13-1502. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-901 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1001 (Supp. 01-4).

R18-13-1503. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-903 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1003 (Supp. 01-4).

R18-13-1504. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-904 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1004 (Supp. 01-4).

R18-13-1505. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-905 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1005 (Supp. 01-4).

R18-13-1506. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-906 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1006 (Supp. 01-4).

R18-13-1507. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-907 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1007 (Supp. 01-4).

R18-13-1508. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-908 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1008 (Supp. 01-4).

R18-13-1509. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-909 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1009 (Supp. 01-4).

R18-13-1510. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-910 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1010 (Supp. 01-4).

R18-13-1511. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-911 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1011 (Supp. 01-4).

R18-13-1512. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-912 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1012 (Supp. 01-4).

R18-13-1513. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-913 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1013 (Supp. 01-4).

R18-13-1514. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-914 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1014 (Supp. 01-4).

Appendix A. Recodified

Historical Note
Appendix A, "Procedures to Determine Annual Biosolids Application Rates", adopted effective April 23, 1996 (Supp. 96-2). Appendix A recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to 18 A.A.C. 9, Article 10 (Supp. 01-4).

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

Article 16, consisting of Sections R18-13-1601 through R18-13-1614, recodified from 18 A.A.C. 8, Article 16 at 8 A.A.R. 5172, effective November 27, 2002; Section and subsection citations within this Article were also updated under A.R.S. § 41-1011(C) (Supp. 02-4).

R18-13-1601. Definitions
In addition to definitions in A.R.S. § 49-851 and A.A.C. R18-13-1301, the terms in this Article shall have the following meanings:

1. "Accumulation site" means an area or site at which PCS from one or more points of generation under the control of the generator of PCS is accumulated for more than 12 hours but less than 90 days prior to treatment, storage, or disposal.
2. "Containment system" means a system designed to contain an accumulation of special waste which meets the design and performance standards in R18-13-1608 and either R18-13-1609 or R18-13-1611.
3. "Excavated" means removed from the earth by scraping or digging a hole or cavity in the earth's surface or otherwise removed from the earth's surface.
4. "Facility" or "special waste receiving facility" means a treatment facility, storage facility, or disposal facility which has been approved by the Director in accordance with A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
5. "Hazardous waste" means hazardous waste as defined in A.R.S. § 49-921(5).
6. "Non-fuel, non-solvent petroleum product" means a petroleum-based substance refined from virgin crude oil that is not used as a solvent or fuel including mineral oils and hydraulic oils.
7. "Non-regulated soils" means soils that are neither hazardous waste, PCS, nor solid waste PCS, and which do not constitute an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.
8. "PCS" or "petroleum-contaminated soils" means soils *excavated for storage, treatment or disposal containing* one or more of the contaminants in the list below at the following concentrations:
   a. Benzene greater than or equal to 1.4 mg/kg,
   b. Toluene greater than or equal to 650 mg/kg,
   c. Ethylbenzene greater than or equal to 400 mg/kg,
   d. Total Xylenes greater than or equal to 420 mg/kg,
   e. Anthracene greater than or equal to 240,000 mg/kg,
   f. Benz(A)anthracene greater than or equal to 21 mg/kg,
   g. Benzo(A)pyrene greater than or equal to 2.1 mg/kg,
   h. Benzo(B)fluoranthene greater than or equal to 21 mg/kg,
   i. Benzo(K)fluoranthene greater than or equal to 210 mg/kg,
   j. Chrysene greater than or equal to 2,000 mg/kg,
   k. Dibenz(A,H)anthracene greater than or equal to 2.1 mg/kg,
   l. Fluoranthene greater than or equal to 22,000 mg/kg,
   m. Fluorene greater than or equal to 26,000 mg/kg,
   n. Indenopyrene greater than or equal to 21 mg/kg,
   o. Naphthalene greater than or equal to 190 mg/kg,
   p. Pyrene greater than or equal to 29,000 mg/kg.
9. "PCS disposal facility" means a site or special waste receiving facility at which the disposal of PCS has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
10. "Petroleum" means petroleum as defined in A.R.S. § 49-1001(11).
11. "Point of compliance" means point of compliance as defined in A.R.S. § 49-244.
12. "Special waste shipper" means a person who transports special waste for off-site treatment, storage, or disposal.
13. "Solid waste PCS" means excavated soils contaminated with petroleum that are not hazardous waste and not PCS but that contain one or more of the contaminants in the list below at the following concentrations:
   a. Benzene greater than or equal to 0.65 but less than 1.4 mg/kg;
   b. Toluene greater than or equal to 650 mg/kg;
   c. Ethylbenzene greater than or equal to 400 mg/kg;
   d. Total Xylenes greater than or equal to 270 but less than 420 mg/kg;
   e. Anthracene greater than or equal to 22,000 but less than 240,000 mg/kg;
   f. Benz(A)anthracene greater than or equal to 6.9 but less than 21 mg/kg;
   g. Benzo(A)pyrene greater than or equal to 0.69 but less than 2.1 mg/kg;
   h. Benzo(B)fluoranthene greater than or equal to 6.9 but less than 21 mg/kg;
   i. Benzo(K)fluoranthene greater than or equal to 69 but less than 210 mg/kg;
   j. Chrysene greater than or equal to 680 but less than 2,000 mg/kg;
   k. Dibenz(A,H)anthracene greater than or equal to 0.69 but less than 2.1 mg/kg;
   l. Fluoranthene greater than or equal to 2,300 but less than 22,000 mg/kg;
   m. Fluorene greater than or equal to 2,700 but less than 26,000 mg/kg;
   n. Indenopyrene greater than or equal to 6.9 but less than 21 mg/kg;
   o. Naphthalene greater than or equal to 56 but less than 190 mg/kg;
   p. Pyrene greater than or equal to 2,300 but less than 29,000 mg/kg.
14. "Storage" means the holding of PCS for a period of more than 90 days but less than one year.
15. "Storage facility" means a special waste receiving facility which engages in storage and which has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
16. "Temporary treatment facility" means an on-site treatment facility, or an off-site treatment facility owned or operated by the generator of PCS, where the PCS is treated to reduce the contaminants that make it PCS and which complies with the requirements of R18-13-1610.
17. "Treatability study" means a study in which a special waste is subjected to a treatment process to determine any one or more of the following:
   a. Whether the waste is amenable to the treatment process,
   b. What pretreatment is required,
   c. The optimal process conditions needed to achieve the desired treatment,
   d. The efficiency of a treatment process,
   e. The characteristics and volumes of residual contaminants from a particular treatment process,
   f. Toxicological and health effects.
18. "Treatment facility" means a special waste receiving facility at which PCS is treated to reduce the PCS contaminants and, if in the state of Arizona, has been Department-approved pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.

Historical Note

Recodified from R18-8-1601 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final

expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1602. Applicability

A. The Director declares that PCS, as defined in R18-13-1601(8), constitutes a special waste as defined in A.R.S. § 49-851(A)(9). Except as otherwise provided in this Section and R18-13-1603, PCS shall be treated, stored, and disposed of in accordance with this Article. PCS shall not be diluted with any material or substance for purposes of avoiding applicability of these rules.

B. PCS which is used in a treatability study shall comply with all of the following:

1. The owner or operator of the facility where a treatability study is to be conducted shall notify the Department of its intent to conduct a treatability study at least 30 days prior to the commencement of the treatability study.
2. The total quantity of PCS used in the treatability study shall not exceed 5000 kilograms, unless evidence is provided which justifies the need for a larger quantity and permission to use a larger amount is granted by the Director.
3. The owner or operator of the facility shall maintain records detailing the treatability study and the results obtained in accordance with R18-13-1614.
4. The treatability study shall be completed and the PCS shall be removed from the site within one year from commencement of the study.
5. Upon completion of the treatability study, the owner or operator of a facility shall dispose of the PCS used in the treatability study in accordance with this Article.
6. Sampling of the PCS shall be conducted in accordance with R18-13-1604(B) and (C) before and after the treatability study is performed.
7. The performance of the treatability study shall not result in an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.

C. PCS which is excavated pursuant to the requirements of A.R.S. Title 49, Chapter 6, Underground Storage Tank Regulation, and which is not removed from the site, shall comply with the requirements of R18-13-1610 and R18-13-1612.

D. PCS incorporated into asphalt for use in paving is not subject to other provisions of this Article if the owner or operator of the facility where the asphalt is produced does all of the following:

1. Notifies the Department in writing at least 30 days prior to commencing such incorporation,
2. Maintains records in accordance with R18-13-1614,
3. Stores the PCS prior to incorporation in accordance with R18-13-1611.

E. Requirements in this Article for Department-approved facilities do not apply to facilities that are out of state or in Indian Country.

Historical Note

Recodified from R18-8-1602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1603. Exemptions

A. Solid waste PCS are exempt from the provisions of this Article, except for the requirements in R18-13-1604, and are subject to A.R.S. § 49-761 et seq.

B. Non-regulated soils are exempt from the provisions of this Article, except for the requirements in R18-13-1604, and are exempt from the requirements of A.R.S. § 49-761 et seq.

C. Asphaltic cement which is not hazardous waste is exempt from the requirements of this Article.

D. Soils which are contaminated with petroleum, which have been generated by households, and which are not hazardous waste, shall be exempt from the requirements of this Article.

Historical Note

Recodified from R18-8-1603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1604. Waste Determination

A. A generator of excavated soil contaminated with petroleum shall determine whether the soil is PCS, solid waste PCS, or non-regulated soil. The basis for the determination shall be maintained for at least three years and shall be made available to the Department upon request. The generator shall make such determination using either of the following methods:

1. Testing the soil pursuant to subsection (B) of this Section. Laboratory analysis of these samples shall be performed by a laboratory licensed by the Arizona Department of Health Services. Approved testing methods, which identify concentrations for total recoverable extraction of contaminants, shall be used.
2. Application of knowledge of the characteristics of the contaminated soil in light of the known or potential source of the contamination. The Department may require sampling to confirm the accuracy of applied knowledge.

B. Sampling of soils contaminated with petroleum shall be performed in accordance with a site-specific written sampling plan which is consistent with the requirements set forth in either of the following:

1. "Test Methods for Evaluating Solid Waste", EPA SW-846, 3rd Edition Volume II: Field Manual, Physical/Chemical Method, Chapter Nine (SW-846 Third Edition), 1986, Environmental Protection Agency, Washington, D.C. and no future editions or amendments, incorporated herein by reference and on file with the Department and the Office of the Secretary of State.
2. "Quality Assurance Project Plan", Chapter 9, May 1991 Edition, Arizona Department of Environmental Quality, Phoenix, Arizona and no future editions or amendments incorporated herein by reference and on file with the Department and the Office of the Secretary of State.

C. If soil excavated during the initial investigation of a site to determine the extent of contamination is PCS, the PCS may be returned into the excavation site from which the soil was removed if all of the following conditions are met:

1. There is no freestanding liquid within the excavation, unless the State Fire Marshal or other jurisdictional fire authority directs otherwise, and the requirements of subsections (C)(2) and (3) are met.
2. The owner or operator provides notification to the Department that the PCS has been returned to the excavation within 14 days after the return of the PCS to the excavation.
3. The owner or operator completes a site characterization within 120 days and implements remediation within 150 days after the date the site characterization began.

Historical Note

Recodified from R18-8-1604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final

expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1605. Transportation

A. PCS transported to a special waste receiving facility in Arizona shall be transported by a special waste shipper which has met the requirements of R18-13-1303.

B. A special waste shipper shall transport the PCS in closed containers pursuant to R18-13-1611(E) or shall ensure that any vehicle used to transport the PCS is loaded and covered in such a manner that the contents will not blow, fall, leak, or spill from the vehicle.

C. A special waste shipper transporting PCS to a special waste receiving facility in Arizona, except a facility located on Indian country, shall deliver PCS to a special waste receiving facility approved by the Department.

Historical Note

Recodified from R18-8-1605 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1606. Fees

In accordance with A.R.S. §§ 49-855(C)(2) and 49-863, the treatment, storage, or disposal facility in this state that first receives a shipment of PCS shall remit to the Department a fee of $4.50 per ton but not more than $45,000 per generator site per year for PCS that is transported to the facility.

Historical Note

Recodified from R18-8-1606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1607. Facility Approval; Application

A. PCS shall be treated, stored, or disposed only at a PCS disposal facility, storage facility, treatment facility, or temporary treatment facility. A facility located in Arizona shall not be constructed or operated prior to obtaining written approval from the Department, except as provided for in A.R.S. § 49-858.

B. The owner or operator of a PCS treatment, storage, or disposal facility shall submit an application to the Department which contains all of the information required in accordance with A.R.S. § 49-762.

C. In addition to the requirements specified in A.R.S. § 49-762, the application shall contain all of the following:

1. A vicinity map, in a scale not over 1:24,000, which shows where the facility is located with respect to the surroundings, including an indication of the use of the adjacent properties.
2. An engineering report which includes all of the following:
   a. Detailed plans and specifications for the entire facility including manufacturer's performance data and design features of treatment, pollution control, and monitoring equipment.
   b. A site description which includes general information on the geology, hydrogeology, soils, and land use. If a facility is located within the pollution management area of a facility for which an aquifer protection permit has been issued under A.R.S. § 49-241 et seq., then the applicant may resubmit or incorporate by reference the general information.
   c. A background soil sampling plan and results which characterize the site, including the rationale used to determine the locations, depths, and number of samples.
3. A site map, in a scale not to exceed 1:2,400, which clearly identifies where the PCS shall be deposited, containment berms, fencing and security measures, access roads, any improvements, wells, and location of surface water courses.
4. An operational plan which includes all of the following:
   a. General description of the daily operations of the facility and the processes, techniques, or methods to be employed;
   b. The source, amount, concentration of contaminants, and any other relevant information concerning the PCS to be handled;
   c. The schedule for sampling the PCS during treatment to evaluate treatment methods;
   d. Description of plans for final use and disposal of PCS and remediated soil, liners, piping, carbon canisters, and any other contaminated equipment;
   e. Procedures to ensure that only waste which has been characterized is received and that hazardous waste is not received;
   f. Procedures for random inspection of incoming loads to verify that only waste which has been characterized is accepted;
   g. Procedures for collecting and managing run-off which comes in contact with PCS;
   h. Procedures for recordkeeping of all inspection results, training of personnel, and sampling results;
   i. Procedures to control public access, and prevent unauthorized entry and illegal dumping.
5. A contingency plan for emergency preparedness which describes alternatives for storage, treatment, or disposal.
6. A closure plan which includes:
   a. A description of the steps necessary to close the facility, the specific proposed closure activities, and an implementation schedule;
   b. Information on site conditions and characterization of the waste received during the life of the facility;
   c. A description of the sampling plan utilized to sample background soil beneath the site following closure;
   d. A description of plans for use of the land site after closure;
   e. A description of post-closure care.
7. An affidavit that the proposed facility is in compliance with local zoning requirements in effect at the time the application is submitted.

D. Following completion of construction of a facility and prior to placement of PCS on the site, the owner or operator shall submit to the Department a construction certification report, including as-built plans which indicate any changes to the design or operational plans for the facility.

E. Plans required in accordance with this Section shall be sealed by a professional engineer registered in the state of Arizona, if required by statute.

F. A facility shall be in compliance with all other applicable federal, state, and local approvals or permits which are required for the design, construction, and operation of the facility.

Historical Note

Recodified from R18-8-1607 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1608. General Design and Performance Standards

A. A facility which receives PCS for treatment, storage, or disposal shall be designed and operated to ensure compliance

with the following performance standards relating to aquifer protection:
1. Pollutants discharged shall in no event cause or contribute to a violation of Aquifer Water Quality Standards, at the applicable point of compliance, or, if the facility is a municipal solid waste landfill, it shall comply with the requirements of A.R.S. § 49-761.01(C).
2. Any pollutant discharged shall not further degrade, at the applicable point of compliance, the quality of any aquifer that already violates an Aquifer Water Quality Standard for that pollutant.

B. A facility which receives PCS for treatment, storage, or disposal shall meet the general design criteria of either subsection (B)(1) or (2) as follows:
1. The PCS shall be held within a containment system designed and constructed to preclude the migration of contaminants into subsurface soil, groundwater, or surface water. The containment system shall meet the following criteria:
   a. Maintain a maximum permeability coefficient of no more than 1 x 10^{-7} cm/sec;
   b. Be designed to provide structural integrity throughout the life of the facility;
   c. Be designed in accordance with the applicable design criteria set forth in subsection (C) of this Section and R18-13-1609 through R18-13-1613; or
2. An alternative design shall contain, at a minimum, all of the following and shall demonstrate that the design will limit discharges listed in A.R.S. § 49-243(D) to the maximum extent practicable:
   a. The hydrogeologic setting of the facility and the capacity of the liner and soils to preclude discharge to groundwater or surface water;
   b. The operating methods, processes, or other alternatives to be used at the facility;
   c. Additional factors which would influence the quality and mobility of the leachate produced and the potential for that leachate to migrate to groundwater or surface water.

C. A PCS treatment, storage, or disposal facility shall meet the following general design criteria:
1. The facility shall be designed to prevent run-on and run-off. The design shall provide run-on control for the peak discharge from a 24-hour, 25-year storm event. Run-off shall be collected and controlled for at least the water volume resulting from a 24-hour, 25-year storm event.
2. The facility shall not restrict the flow of the 100-year floodplain, reduce temporary water storage capacity of the floodplain, or be maintained in a manner which results in a washout or inundation of the PCS.
3. The owner or operator shall control public access and shall prevent unauthorized vehicular traffic and illegal dumping.
4. The owner or operator shall manage any standing water that has come into contact with the PCS in accordance with rules promulgated pursuant to A.R.S. § 49-761 et seq.

D. A facility which manages PCS in accordance with the requirements of this Article shall be exempt from the aquifer protection permit requirements in accordance with A.R.S. § 49-250(B)(21).

E. A facility which has been issued an aquifer protection permit from the Department shall be exempt from the requirements of subsections (A) and (B) of this Section but shall comply with the requirements of subsection (C).

Historical note

Recodified from R18-8-1608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1609. Treatment Facility

A. The owner or operator of a PCS treatment facility shall obtain approval from the Department prior to commencement of construction or operation and shall comply with all of the following:
1. Not dilute PCS as a method of treatment, except as allowed in the approved plan for the facility;
2. Treat the PCS or, if the chosen treatment process fails to remediate the soil to below the regulatory thresholds, dispose of the PCS pursuant to R18-13-1613.
3. Sample the treated soil and provide the results of the sampling to the Department within 45 days of completion of the treatment.

B. A PCS treatment facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
1. At a minimum, a containment system shall include a clay, synthetic, concrete, or asphalt liner component which is placed upon a foundation or prepared subgrade which supports the liner, and resists pressure gradients above and below the liner, to prevent failure due to settlement, compression, or uplift.
2. During construction or installation of a containment system, liners and cover systems shall be inspected for uniformity, damage, and imperfections. Immediately after construction or installation is completed, and prior to placement of PCS within the containment system, the systems shall be checked for both of the following:
   a. Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.
   b. Concrete, asphalt, and soil-based liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.
3. The liner component shall consist of one of the following:
   a. A synthetic liner which is compatible with the waste and which has a minimum 6” buffer layer of sand or soil between the liner and the PCS.
   b. A compacted soil or admixed liner provided with a minimum 6” buffer layer of sand or soil between the liner and the PCS.
   c. An asphalt or reinforced concrete liner which is not in the drainage area of a dry well and is free of unsealed cracks and seams.
4. Aeration equipment shall be limited to the area above the buffer layers indicated in subsections (B)(2)(a) and (b).
5. The owner or operator of the facility shall utilize protective measures to ensure containment system integrity during placement, treatment, or removal of the PCS.
6. PCS stored at a treatment facility prior to treatment shall be stored in accordance with the requirements of R18-13-1611.

Historical Note

Recodified from R18-8-1609 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1610. Temporary Treatment Facility

A. The owner or operator of a temporary treatment facility shall treat and remove all PCS from the temporary treatment facility

within one year from the date of commencement of receipt of PCS for treatment. PCS shall not be diluted to meet any treatment requirement, except in accordance with the approved plan.

B. A temporary treatment facility shall obtain approval from the Department prior to commencing construction or operation. In lieu of the requirements of R18-13-1607(C), an application for approval shall contain all of the following:
1. An affidavit signed by the owner or operator of the temporary treatment facility which states that the facility will comply with the requirements of this Article;
2. An affidavit that the proposed facility is in compliance with local zoning requirements in effect at the time the application is submitted;
3. Application information required pursuant to A.R.S. § 49-762.03(C)) for plan approval for temporary treatment facilities;
4. A vicinity map, in a scale not over 1:24,000, which shows where the facility is located with respect to the surroundings, including an indication of the use of the adjacent properties;
5. A site description which includes general information on the geology, hydrogeology, soils, and land use;
6. A background soil sampling plan and results which characterize the site, including the rationale used to determine the locations, depths and number of samples;
7. A site map, in a scale not to exceed 1:2,400, which clearly identifies where the PCS shall be deposited, containment berms, fencing and security measures, access roads, any improvements, wells, and location of surface water courses;
8. An operational plan which includes all of the following:
   a. General description of the daily operations of the facility and the processes, techniques, or methods to be employed;
   b. The source, amount, concentration of contaminants, and any other relevant information concerning the PCS to be handled;
   c. The schedule for sampling the PCS during treatment to evaluate treatment methods;
   d. Description of plans for final use and disposal of PCS and remediated soil, liners, piping, carbon canisters, and any other contaminated equipment;
9. A closure and post-closure care plan which includes both of the following:
   a. A description of the steps necessary to close the facility, the specific proposed closure activities, and an implementation schedule;
   b. A description of the sampling plan utilized to sample background soil beneath the site following closure.

C. A temporary treatment facility shall not be operated for more than one year unless a one-time extension is granted by the Department. The Department may grant an extension of up to one additional year if all of the following are met:
1. The inability to perform is caused by events beyond the control of the owner or operator, including acts of God, which include flood, tornado, earthquake, and causes beyond the owner's or operator's control including fire, explosion, unforeseen strikes or work stoppages, riot, sabotage, public enemy, war, requirements established by courts of competent jurisdiction, and other governing law. Financial inability to perform shall not be justification for an extension.
2. The owner and operator submits to the Department verifiable documentation which includes all of the following:
   a. A description of the circumstances causing any delay;
   b. Evidence of the existence of the circumstance;
   c. A description of past, present, and future measures taken or to be taken by the owner or operator to prevent or minimize any delay;
   d. A timetable by which the owner and operator will resume and complete required performance.
3. The request is received at least 60 days prior to the expiration of the year in which the facility first received PCS. Where the Department grants an extension, that extension shall be granted prior to the expiration of the deadline and communicated to the owner or operator in writing.

D. A temporary treatment facility shall meet the design criteria as specified in R18-13-1608 and R18-13-1609(B).

E. PCS stored at a temporary treatment facility prior to treatment shall be stored in accordance with the requirements of R18-13-1611.

F. In accordance with A.R.S. §§ 49-762.03(C), a temporary treatment facility shall be exempt from the notice and public hearing requirements set forth in A.R.S. § 49-762.04(A).

Historical Note

Recodified from R18-8-1610 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1611. Storage Facility

A. A shipment of PCS shall not be stored for a period exceeding one year from the date the PCS is received.

B. Each shipment of contaminated soil shall be identified by source and stored in a manner which does not allow commingling of different shipments until all sampling results have been obtained. PCS shall be stored within an approved containment system and shall not be commingled with treated soils.

C. A PCS storage facility shall obtain approval from the Department prior to commencement of construction or operation. A PCS storage facility designed in accordance with R18-13-1608(B)(1) shall comply with either of the following:
1. The containment system shall meet the requirements of R18-13-1609(B).
2. The PCS shall be stored in tanks or containers which meet the requirements of subsection (E) of this Section.

D. A PCS storage area or each tank or container used for storage shall be marked as follows:

CAUTION: CONTAINS PETROLEUM-CONTAMINATED SOIL
GENERATOR NAME:
GENERATOR ID#:
ACCUMULATION START DATE:

The owner or operator of the storage facility shall fill in the accumulation start date at the time the PCS is placed into storage. The letters shall be legible, not obstructed from view, on a high contrast background, and sufficiently durable to equal or exceed the duration of storage. Lettering size shall be 2.5 cm (1 inch) and in Sans Serif, Gothic, or Block style.

E. A tank or container used to store PCS shall meet all of the following requirements:
1. Prevent leakage of PCS and any free liquids from the tank or container;
2. Be made of, or lined with, materials which will not react with the PCS;
3. Be kept closed during storage except to add or remove PCS;

4. Not be opened, handled, or stored in a manner which may rupture the tank or container or cause it to leak;
5. Shall be inspected monthly by the owner or operator of the storage facility for leaks and for deterioration. A written record of the inspection shall be prepared at the time of the inspection and shall document corrective action, if any, taken as a result of the inspection.

F. A PCS storage facility at which PCS is stored in piles shall comply with both of the following:
1. All storage piles shall be covered or otherwise managed to control wind dispersal of the PCS.
2. Storage piles of PCS shall be inspected weekly and a written record of the inspection shall be prepared at the time of the inspection which documents any corrective action taken as a result of the inspection. The record shall document detection of any of the following:
   a. Deterioration, malfunctions, or improper operation of run-on and run-off control systems;
   b. Malfunctioning of wind dispersal control systems;
   c. The presence of leachate in and the malfunctioning of any leachate collection and removal systems.

Historical Note
Recodified from R18-8-1611 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1612. Accumulation Sites

A. PCS from one or more points of generation under the control of a single generator may be accumulated in an accumulation site under the control of that generator for up to 90 days prior to shipment of the PCS to a storage, disposal, or treatment facility.

B. An accumulation site shall comply with the storage facility requirements set forth in R18-13-1611, except subsection (A) of that Section. An accumulation site shall not be required to comply with the requirements in R18-13-1607.

C. While PCS is at an accumulation site, the owner or operator shall control public access and prevent unauthorized vehicular traffic and illegal dumping. PCS shall be managed to prevent the PCS from being exposed to storm water run-on or run-off.

Historical Note
Recodified from R18-8-1612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1613. Disposal

A. PCS shall be disposed at a special waste receiving facility which has been approved for the disposal of PCS, or at a hazardous waste management facility as defined in R18-13-260(E)(13).

B. A PCS disposal facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
1. The disposal facility shall be designed with a composite liner, as defined in subsection (B)(2), and a leachate collection system that is designed and constructed to maintain less than a 12-inch depth of leachate over the liner.
2. For purposes of this Section, "composite liner" means a system consisting of two components: the upper component shall consist of a minimum 30-mil flexible membrane liner (FML) and the lower component shall consist of at least a two-foot layer of compacted soil with a permeability coefficient of no more than 1 x 10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 mil thick. The FML component shall be installed in direct and uniform contact with the compacted soil component.

Historical Note
Recodified from R18-8-1613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1614. Records

Records required to be kept pursuant to this Article shall be maintained by the owner or operator and made available for inspection by the Director for a period of three years or longer during the course of an enforcement action or litigation.

Historical Note
Recodified from R18-8-1614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

ARTICLE 17. RESERVED

ARTICLE 18. RESERVED

ARTICLE 19. RESERVED

ARTICLE 20. RESERVED

ARTICLE 21. SOLID WASTE LANDFILL REGISTRATION FEES

Article 21, consisting of Sections R18-13-2101 through R18-13-2103, made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2).

R18-13-2101. Definitions

In addition to the definitions in A.R.S. §§ 49-701 and 49-701.01, for the purpose of this Article, the terms used in this Article have the following meanings:
1. "Defined time period" means the 12-month period that begins on July 1 of a calendar year and ends on June 30 of the following calendar year and consists of the actual number of calendar days in that 12-month period.
2. "Disposal fee invoice" means the quarterly landfill disposal fee invoice the Department mails to a landfill operator, on which the landfill operator indicates the amount of waste received and the amount of the disposal fees owed to the Department as required under A.R.S. § 49-836.
3. "Full quarter" means any of the standard fiscal quarters of the defined time period for which a municipal solid waste landfill accepted waste on or before the first day of the quarter and on or after the last day of that quarter.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-2102. Annual Registration Fee for an Existing Solid Waste Landfill

A. An existing solid waste landfill, except those described in subsection (C), shall pay an annual registration fee within 30 days of receipt of an invoice from the Department according to the following:
1. For municipal solid waste landfills that received less than 12,000 tons during the defined time period, $1,250.
2. For municipal solid waste landfills that received at least 12,000 tons but less than 60,000 tons during the defined time period, $2,500.
3. For municipal solid waste landfills that received at least 60,000 tons but less than 225,000 tons during the defined time period, $7,500.
4. For municipal solid waste landfills that received 225,000 tons or more during the defined time period, $12,500.

5. Non-municipal solid waste landfills shall pay a flat fee of $3,750.
6. Solid waste landfills that are closed to the public and that accept nonhazardous waste only shall pay a flat fee of $3,750.

B. The Department shall determine the amount of waste received by a municipal solid waste landfill by one of the following methods:
1. For a municipal solid waste landfill that accepted waste over the entire defined time period:
   a. As the reported tons of solid waste received on the disposal fee invoice; or
   b. As the reported units of compacted or uncompacted solid waste received on the disposal fee invoice and reported under A.R.S. § 49-836(A)(1); or
2. For a municipal solid waste landfill that accepted waste for only a portion of the defined time period, but no less than a full quarter, the Department shall project the total amount of waste that would have been received by the landfill over the entire defined time period, using one of the following methods:
   a. For a municipal solid waste landfill that reported receiving waste for at least a full three quarters but less than the entire defined period, the amount of waste for the remaining quarter is the total amount of the waste reported for the full three quarters divided by three;
   b. For a municipal solid waste landfill that reported receiving waste for at least a full two quarters but less than three quarters, the amount of waste for the remaining two quarters is the same as the total amount of waste reported for the two full quarters; or
   c. For a municipal solid waste landfill that reported receiving waste for at least one full quarter but less than two quarters, the amount of waste for the remaining three quarters is the total of the amount of the waste reported for the full quarter multiplied by three.

C. For a municipal solid waste landfill that accepted waste for less than a full quarter, the annual landfill registration fee is $1,250.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-2103. Annual Landfill Registration: Due Date and Fees

A. An operator of a new solid waste landfill shall register the solid waste landfill and pay the landfill registration fee as follows:
1. The operator shall pay the initial landfill registration fee within 30 days of the date that the Department approves the facility plan. The initial landfill registration fee is $1,250.
2. Registration is valid for one year, except if the landfill is initially registered during October, November, or December of a calendar year, the next landfill registration due date is December 31 of the following calendar year and each calendar year thereafter unless released from the annual landfill registration requirement as specified in subsection (C).
3. The annual registration fee remains $1,250 until the first annual registration period after the first full quarter of the defined time period.

B. After the first full quarter, the Department shall calculate the annual registration fee according to R18-13-2102, and specify the fee on the Department's annual landfill registration invoice for the solid waste landfill. The Department shall calculate and the solid waste landfill shall pay the annual landfill registration fee until the first registration period after the solid waste landfill stops accepting waste during a fiscal quarter of the defined time period.

C. From the time a solid waste landfill stops accepting waste as specified in subsection (B), until the owner or operator of the solid waste landfill is released from its obligation to provide financial assurance for closure as required by A.R.S. §§ 49-761 or 49-770, the annual registration fee is $1,250.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 22. RESERVED

ARTICLE 23. RESERVED

ARTICLE 24. RESERVED

ARTICLE 25. EXPIRED

R18-13-2501. Expired

Historical Note
Section adopted by final rulemaking at 5 A.A.R. 4654, effective November 15, 1999 (Supp. 99-4). Section expired under A.R.S. § 41-1056(J), at 23 A.A.R. 3429, effective October 10, 2017 (Supp. 17-4).

ARTICLE 26. EXPIRED

R18-13-2601. Expired

Historical Note
Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

R18-13-2602. Expired

Historical Note
Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

R18-13-2603. Expired

Historical Note
Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

R18-13-2604. Expired

Historical Note
Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

ARTICLE 27. EXPIRED

R18-13-2701. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1503, effective July 1, 2010 (Supp. 10-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

R18-13-2702. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

R18-13-2703. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Section and fee table expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

44-1302. Sale of new tires; fees; acceptance of waste tires; notice; definition

(Rpld. 1/1/26)

A. Until the effective date of the fees authorized pursuant to subsection N of this section, a retail seller of new motor vehicle tires shall collect a fee of two percent of the purchase price for each tire sold but not more than $2 for each tire sold, which shall be listed separately on any invoice.

B. Until the effective date of the fees authorized pursuant to subsection N of this section, if in a sale of a motor vehicle by a manufacturer to a wholesaler or retailer the cost of the tires as a separate component of the motor vehicle is not specified by the manufacturer, the fee per tire to be collected shall not exceed one-half of the maximum fee allowed under this section for a motor vehicle with a gross vehicle weight under ten thousand pounds.

C. Until the effective date of the fees authorized pursuant to subsection N of this section, a wholesale seller of new motor vehicle tires who sells tires to this state or a political subdivision of this state or who sells tires to a private entity that does not resell the tires shall collect a fee of two percent of the purchase price for each tire sold but not more than $2 for each tire sold, which shall be listed separately on any invoice.

D. The fee shall be paid to the department of revenue for deposit on a quarterly basis in the waste tire fund established by section 44-1305. Unless the context otherwise requires, title 42, chapter 5, article 1 governs the administration of the fees imposed by this section, except that:

1. A separate license is not required for the fee imposed by this section. The fee shall be reported and paid on forms prescribed by the department.

2. A separate bond is not required of employees of the department in administering the fee.

3. The fee imposed by this section may be included without segregation in any notice and lien filed for unpaid transaction privilege taxes.

4. The fee imposed by this section shall not be included in computing the tax base, gross proceeds of sales or gross income from the sale of new motor vehicle tires for the purposes of title 42, chapter 5 and is not subject to any transaction privilege, sales, use or other similar tax levied by a city, town, or special taxing district.

E. A retail seller of new motor vehicle tires or a wholesale seller of new motor vehicle tires shall accept waste tires from customers at the point of transfer. A seller shall accept up to the number of new tires sold at that point of transfer annually and may accept additional tires from customers. The seller shall accept tires from a customer if the customer presents a receipt within thirty days after the date of purchase. This subsection does not apply to sellers of new motor vehicles.

F. A designated waste tire collection site established pursuant to section 44-1304, subsection G, shall require a manifest for the disposal of waste tires at the site and shall establish registration procedures for the collection site.

G. A seller of motor vehicle tires or the seller's designee complying with this section shall provide a manifest to the designated collection site established pursuant to section 44-1304, subsection G, to dispose of waste tires and shall be preregistered at the designated collection site.

H. A county or private enterprise under contract with a county may refuse to accept waste tires and may impose a tire tipping fee, not exceeding an amount necessary to recover the costs of administering a waste tire program

established pursuant to section 44-1305, if any of the following conditions exists:

1. The private enterprise is not receiving waste tire fund monies from the county pursuant to section 44-1305.

2. Waste tires are manifested as originating outside of the county.

3. A seller of motor vehicle tires complying with subsection E of this section, is not preregistered at a collection site where registration is required.

4. The county's pro rata share of the total waste tire fund is two percent or less, and after a year of receiving monies from the waste tire fund, the county determines that the cost of waste tire disposal exceeds the amount received.

I. A designated waste tire collection site established pursuant to section 44-1304, subsection G, shall not refuse to accept waste tires from a resident of the county who is not a seller of motor vehicle tires and shall not impose a tire tipping fee for up to five waste tires per year from a resident of the county who is not a seller of motor vehicle tires. Such waste tire collection sites may impose a tire tipping fee on waste tires in excess of five tires per year from a resident of the county who is not a seller of motor vehicle tires.

J. A seller of motor vehicle tires who is subject to subsection E of this section shall post a written notice that is clearly visible in the public sales area of the establishment and that contains the following language:

It is unlawful to throw away a motor vehicle tire.

Recycle all used tires.

This retailer is required to accept scrap tires if any new or recapped tires are purchased here. When any new tire is purchased, an additional fee will be charged.

K. An advertisement or other printed promotional material related to the retail sale of tires shall contain the following notice in bold print:

State or local taxes or surcharges for environmental protection will be an extra charge.

L. A credit of $.10 per tire is allowed against the fee imposed by this article for expenses incurred by the payer of the fee for accounting for and reporting the fees.

M. This section does not apply to a person whose retail sales of new motor vehicle tires are not in the ordinary course of business.

N. The director of environmental quality shall establish by rule the fees, including any associated maximum fees, required by subsection A, B or C of this section.

O. For the purposes of this section, "retail seller of new motor vehicle tires" and "wholesale seller of new motor vehicle tires" includes those persons who sell or lease new motor vehicles to others in the ordinary course of business.

44-1303. Waste tire collection sites; registration

A. An owner or operator of a waste tire collection site shall register with the department of environmental quality and provide the department with information concerning the site's location and size and the approximate number of waste tires that are stored at the site and shall initiate steps to comply with this article.

B. Any waste tire collection site that is established after July 20, 2011 shall register with the department before beginning operation and shall pay a registration fee. After July 20, 2011, the director shall establish by rule a registration fee, including a maximum fee. Registration fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

44-1304.01. Storage, disposal, discard or abandonment of used motor vehicle tires; registration fees; violation; classification; exception

A. It is unlawful to store one hundred or more used motor vehicle tires outdoors as follows:

1. In any fashion that exceeds twenty feet in height.

2. In a pile that is more than one hundred fifty feet from a twenty foot wide access route that allows fire control apparatus to approach the pile. Access routes between and around tire piles shall be at least twenty feet wide and maintained free of accumulations of rubbish, equipment or other materials. Access routes shall be spaced so that a maximum grid system unit of fifty feet by one hundred fifty feet is maintained.

3. Within three feet of any property line.

4. In any fashion that exceeds six feet in height if the used tires are stored between three and ten feet of any property line.

5. Within fifty feet of any area in which smoking of tobacco or any other substance by persons is allowed. "No smoking" signs shall be posted in suitable and conspicuous locations.

6. At any area in which the used motor vehicle tires are stored and in which electrical wiring, fixtures or appliances do not comply with the national electrical code.

7. Without placing class "2A-10BC" type fire extinguishers at well marked points throughout the storage area so that the travel distance from any point in the storage area to a fire extinguisher is not more than seventy-five feet.

8. Without prior registration of the site with the department of environmental quality. The registration shall be on a form approved by the department and shall include the site's location, the name of the owner of the property, the name of the owner or operator of the business storing the waste tires, if applicable, and the type and approximate quantity of waste tires stored at the site. For any waste tire collection site that is operating on September 26, 2008, the owner of the property shall register pursuant to this paragraph on or before November 25, 2008. For any person who stores one hundred or more used motor vehicle tires outdoors after July 20, 2011, the operator shall pay a registration fee. After July 20, 2011, the department shall establish by rule a registration fee, including a maximum fee. Registration fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

B. A person who knowingly discards or abandons five hundred or more motor vehicle tires, discards or abandons any motor vehicle tires for commercial purposes except as provided in section 44-1304, or otherwise knowingly performs any act prohibited by subsection A of this section involving five hundred or more motor vehicle tires is guilty of a class 5 felony.

C. The attorney general may enforce this section.

D. For the purposes of this section, used motor vehicle tires do not include tires that have been recapped and have not yet been put back into service.

44-1322. Disposal of lead acid batteries

A. The disposal of lead acid batteries in landfills and the incineration of those batteries is prohibited.

B. An owner or operator of a solid waste disposal facility shall not knowingly accept a lead acid battery for disposal.

C. A lead acid battery shall be discarded or disposed of only as follows:

1. A lead acid battery retailer or wholesaler may deliver a lead acid battery to any one of the following:

(a) A permitted secondary lead smelter.

(b) A battery manufacturer.

(c) A collection or recycling facility authorized by the federal environmental protection agency or the department of environmental quality.

(d) In the case of battery retailers only, an agent of a battery wholesaler.

2. A person other than a lead acid battery retailer or wholesaler may deliver a lead acid battery to any one of the following:

(a) A lead acid battery retailer or wholesaler.

(b) A permitted secondary lead smelter.

(c) A collection or recycling facility authorized by the federal environmental protection agency or the department of environmental quality.

D. The director of the department of environmental quality shall register collection and recycling facilities that accept lead acid batteries. The director shall require collection and recycling facilities that handle lead acid batteries to pay an initial registration fee and annual fee established by rule. The director shall deposit, pursuant to sections 35-146 and 35-147, registration fees in the solid waste fee fund established by section 49-881.

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through regulating the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and not more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Use any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department shall establish by rule a fee as a condition of licensure, including a maximum fee. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, articles 8 and 9 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203 except that state agencies are exempt from paying the fees.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-706. Waste programs general permits; rules; fee

A. The department may establish a general permit for any permit or license issued pursuant to this chapter. The general permit consists of the following:

1. The director may issue by rule a general permit for a defined class of facilities, activities or practices if all of the following apply:

(a) The cost of issuing individual permits or licenses cannot be justified by any environmental or public health benefit that may be gained from issuing individual permits.

(b) The facilities, activities or practices in the class are substantially similar in nature.

(c) The director is satisfied that appropriate conditions under a general permit for operating the facilities or conducting the activity or practice will meet the applicable requirements prescribed in this chapter for the facility, activity or practice.

2. In addition to other applicable enforcement actions, if a person is in substantial noncompliance with the conditions of a general permit, the director may revoke coverage under the general permit for that person and require that the person obtain an individual permit. A general permit may be revoked, modified or suspended by rule if the director determines that any of the conditions prescribed in paragraph 1 no longer apply.

3. Rules adopted pursuant to paragraph 1 may require a person seeking coverage under a general permit to notify the director of the person's intent to operate pursuant to the general permit and to pay the applicable fee established by the director by rule.

B. The director shall establish by rule fees for general permits pursuant to this section, including maximum fees. Fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

49-747. Annual registration of solid waste landfills; fee; disposition of revenue

A. All solid waste landfills shall be registered annually with the department.

B. The director shall establish a procedure for mailing registration forms each year to the owners of all solid waste landfills. The registration is valid for one year after the date of registration.

C. At the time of registration, the owner of a solid waste landfill shall pay to the department an annual fee. The department shall establish by rule an annual fee, including a maximum fee.

D. All monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881. The director may authorize the expenditure of monies from the solid waste fee fund to pay the reasonable and necessary costs of administering the registration program pursuant to section 49-881.

49-761. Rulemaking authority for solid waste facilities; exemption; financial assurance; recycling facilities

A. The department shall adopt rules regarding the storage, processing, treatment and disposal of solid waste as prescribed by subsections B through M of this section. In adopting rules, the department shall consider the nature of the waste streams at the facilities to be regulated. The department shall also consider other applicable federal and state laws and rules in an effort to avoid practices or requirements that duplicate, are inconsistent with or will result in dual regulation with other applicable rules and laws. Facilities that obtain and maintain coverage under a general permit established by the department pursuant to section 49-706 are exempt from rules adopted pursuant to this section. In adopting rules for solid waste facilities, the director may include requirements for corrective actions in response to a release, as defined in section 49-281, from a solid waste facility that violates or results in a violation of any provision of this chapter, rule adopted pursuant to this chapter or solid waste facility plan approved pursuant to this chapter. These rules shall be consistent with section 49-762.08, subsection B, subsection C, paragraphs 1 and 2 and subsections D and E.

B. For purposes of administering 42 United States Code section 6945, as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference except as prescribed by paragraph 2 of this subsection. This subsection, as it applies to municipal solid waste landfills, governs if there is any conflict between this subsection and any other statute relating to solid waste. Municipal solid waste landfill facility plans submitted pursuant to section 49-762 shall comply with this subsection. In administering this subsection or in adopting or administering any rules adopted pursuant to this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained. The following apply to the department's administration of 42 United States Code section 6945 and to the department's adoption of rules for municipal solid waste landfills:

1. The department may adopt rules for municipal solid waste landfills. Rules adopted pursuant to this paragraph shall not be more stringent than or conflict with 40 C.F.R. part 258 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 258 if those standards are consistent with and not more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. Rules adopted pursuant to this paragraph are effective on the concurrence of the administrator with this state's municipal solid waste landfill program.

2. 40 C.F.R. part 258, table I is not adopted in its entirety. The department shall use aquifer water quality standards that have been adopted by the department pursuant to section 49-223 and shall use those portions of table I that are more restrictive than the standards adopted pursuant to section 49-223.

C. The department shall adopt rules for those solid waste land disposal facilities that are not municipal solid waste landfills and that are not regulated by the coal combustion residuals program established pursuant to article 11 of this chapter. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with 40 C.F.R. part 257, subparts A and B for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 257, subparts A and B if these standards are consistent with and not more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. In administering this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained in the department's rules. Aquifer protection provisions adopted pursuant to this subsection do not apply to an owner or operator of a solid waste facility if the owner or operator submits an administratively complete application for an aquifer protection permit pursuant to chapter 2, article 3 of this title before the date that the owner or operator is required to submit a solid waste facility plan.

D. The department shall adopt rules to define biohazardous medical waste and to regulate biohazardous medical waste and medical sharps to include all of the following:

1. A definition for biohazardous medical waste that includes wastes that contain material that is likely to transmit etiologic agents that have been shown to cause or contribute to increased human morbidity or mortality of

epidemiologic significance. The department shall consult with the department of health services in making this determination.

2. Reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of biohazardous medical waste and medical sharps, beginning with the placement by the generator of the waste in containers for the purpose of waste collection. The department shall require payment of a fee for the licensure of a transporter of biohazardous medical waste. The department shall establish by rule a fee for the licensure of a transporter of biohazardous medical waste, including a maximum fee. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881. In the case of self-hauling of waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules. The department shall also adopt reasonably necessary rules regarding the tracking of biohazardous medical waste and medical sharps.

3. Rules that require facilities that receive plan approval under section 49-762, subsection A, paragraph 3 to pay an annual fee as established by rule. The department shall deposit, pursuant to sections 35-146 and 35-147, fees in the solid waste fee fund established by section 49-881.

E. The department may adopt reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of nonbiohazardous medical waste beginning with the placement by the generator of the waste in containers for the purpose of waste collection. In the case of self-hauling of the waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules.

F. The department shall adopt rules for the application of sludge from a wastewater treatment facility to land for use as fertilizer or beneficial soil amendment. For the purposes of this subsection, "sludge" has the same meaning as sewage sludge as defined in 40 Code of Federal Regulations section 122.2 in effect on January 1, 1998.

G. The department shall adopt rules regarding the storage, processing, treatment or disposal of solid waste at solid waste facilities that are identified in section 49-762.01. The rules shall allow the owner or operator to certify compliance with the department's statutes and rules instead of obtaining a solid waste facility plan approval. The rules shall provide that the applicant at its option may request approval of a solid waste facility plan rather than certifying compliance.

H. The department shall issue by rule best management practices for the classes of solid waste facilities set forth in section 49-762.02. The department shall establish fees in rules for solid waste facilities. The department shall deposit, pursuant to sections 35-146 and 35-147, fees in the solid waste fee fund established by section 49-881.

I. The department shall adopt reasonably necessary rules establishing minimum standards for storing, collecting, transporting, disposing and reclaiming solid waste, including garbage, trash, rubbish, manure and other objectionable wastes. These rules shall provide for inspecting premises, containers, processes, equipment and vehicles, and for abating as environmental nuisances any premises, containers, processes, equipment or vehicles that do not comply with the minimum standards of these rules. The rules adopted pursuant to this subsection do not apply to sites that are either regulated by section 49-762, 49-762.01 or 49-762.02 or exempted from the definition of solid waste facility in section 49-701 or from the definition of solid waste in section 49-701.01. Notwithstanding any other provision of this subsection, rules adopted pursuant to this subsection shall apply to defining environmental nuisances pursuant to section 49-141.

J. The department shall adopt rules relating to financial assurance requirements. The rules shall indicate the types of financial assurance mechanisms to be required and the content, terms and conditions of each financial mechanism, including circumstances under which the department may take action on the financial assurance mechanism for facility closure, postclosure care if necessary and corrective action for known releases. The department shall establish fees in rule. The department shall deposit, pursuant to sections 35-146 and 35-147, fees in the solid waste fee fund established by section 49-881. The financial assurance mechanisms shall include all of the following:

1. Surety bond.

2. Certificate of deposit.

3. Trust fund with pay-in period.

4. Letter of credit.

5. Insurance policy.

6. Certificate of self-insurance.

7. Deposit with the state treasurer.

8. Evidence of ability to meet any of the following:

(a) Corporate financial test.

(b) Local government financial test.

(c) Corporate guarantee test.

(d) Local government guarantee test.

(e) Political subdivision financial test that shall require the department to consider the entity's bond rating, income stream, assets, liabilities and assessed valuation of taxable property.

9. Multiple financial assurance mechanisms.

10. Additional financial assurance mechanisms that may be acceptable to the director.

K. The department shall adopt rules that prescribe standards to be used in determining if a site is a recycling facility.

L. The director may adopt rules that prescribe standards to be used in determining if a solid waste facility includes significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

M. The department shall adopt facility design, construction, operation, closure and postclosure maintenance rules for biosolids processing facilities and waste composting facilities that must obtain plan approval pursuant to section 49-762. The department shall require facilities that receive plan approval pursuant to section 49-762 to pay an annual fee. The department shall establish by rule the annual fee. The department shall deposit, pursuant to sections 35-146 and 35-147, fees in the solid waste fee fund established by section 49-881.

49-762.03. Solid waste facility plan approval

A. Except as provided in subsections C and E of this section, the owner or operator of a solid waste facility identified in section 49-762 shall obtain the department's approval of a solid waste facility plan as follows:

1. For a new solid waste facility and before commencing construction of the solid waste facility, the owner or operator shall obtain approval of a solid waste facility plan that satisfies rules adopted by the director.

2. For an existing solid waste facility, the owner or operator shall file with the department a solid waste facility plan within one hundred eighty days after the effective date of rules adopted pursuant to section 49-761 that contain design and operation standards for that type of solid waste facility. An existing solid waste facility may continue to operate while the department reviews the plan.

B. For a solid waste facility subject to site approval pursuant to section 49-767, a solid waste facility plan shall not be submitted to the department until the site for the solid waste facility has been approved pursuant to section 49-767. For all new solid waste landfills, a solid waste facility plan shall provide evidence of compliance with or the inapplicability of city, town or county zoning ordinances.

C. The director shall grant temporary authorization to operate a new solid waste facility if in the director's opinion the solid waste facility is needed immediately and could not be properly planned in advance.

D. An owner or operator of more than one solid waste facility that conducts similar activities with similar waste streams may prepare and implement a single plan that covers all of its facilities if it has received prior approval from the director and has complied with rules regarding single plans that are adopted by the director.

E. The director by rule may exempt from some or all of the facility plan approval requirements those solid waste facilities that are located in unincorporated areas and that are used for disposal by any single family residence located on the same property or those solid waste facilities that do not present a threat to public health and safety and the environment.

F. The department shall collect from the applicant reasonable fees established by the director by rule for the approval of the plan, including costs for the processing, review, approval or disapproval of the plan. The director shall establish by rule fees for costs incurred by the department for the processing, review, approval or disapproval of the plan up to the established maximum fees. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

G. The department may contract with private consultants for the purposes of assisting the department in reviewing solid waste facility plan approvals to determine whether a facility meets the criteria of section 49-762.04. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant. If the department contracts with a consultant under this section, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding section 49-881, fees collected by the department for expedited plan review shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881 and used for payment of the costs of the consultant services. Fees received for the purpose of expedited plan review are not subject to appropriation.

49-762.05. Self-certification procedures; rules

A. The owner or operator of a solid waste facility identified in section 49-762.01 shall comply with the self-certification requirements prescribed by this section and rules adopted by the director.

B. The owner or operator of a new solid waste facility may be required by rule to submit some or all of the following information to the department before the start of construction:

1. Design and operational plans or other documents necessary to describe the design of the facility and the practices and methods that are or will be used to comply with the design and operation rules adopted by the director for that type of facility.

2. A demonstration of financial assurance in accordance with section 49-770.

3. A demonstration of compliance with either local zoning laws or section 49-767.

4. A demonstration of the issuance of other environmental permits that are required by statute.

5. A copy of the public notice in a newspaper of general circulation in the area in which a new solid waste facility will be located. The public notice shall state the intent to construct and operate a new solid waste facility pursuant to this subsection.

C. The owner or operator of an existing solid waste facility may be required by rule to submit some or all of the information described in subsection B, paragraphs 1 through 4 of this section within one hundred eighty days after the adoption of design and operation rules for that type of facility.

D. The owner or operator shall maintain all documents required by statute or rule at the solid waste facility or any other location as determined by rule, and those documents shall be made available for inspection pursuant to section 49-763.

E. An owner or operator making a substantial change to a solid waste facility shall submit documentation to the department before the start of construction stating that the facility will remain in compliance with the design and operation rules for that type of facility. The owner or operator of a solid waste facility that makes any changes in its compliance with subsection B, paragraph 2 or 3 of this section shall submit copies of those changes to the department.

F. A person making a submittal under this section shall certify in writing that the information submitted is true, accurate and complete to the best of the person's knowledge and belief.

G. Self-certified facilities identified in section 49-762.01 are not subject to the location restrictions of section 49-772.

H. The department shall collect from the applicant registration fees. The department shall establish by rule registration fees, including maximum fees. Fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

I. An owner or operator of more than one solid waste facility identified in section 49-762.01 that conducts similar activities with similar waste streams may submit one self-certification filing for all such facilities if the owner or operator has received prior approval from the director and has complied with rules for self-certification that are adopted by the director.

49-802. Federal used oil program; incorporation by reference; rulemaking

A. The department shall administer 42 United States Code section 6935, as amended on January 1, 1997, as the used oil program for this state. For that purpose, 40 Code of Federal Regulations part 279, as amended on January 1, 1997, is adopted by reference. For purposes of this program, the United States, the environmental protection agency and the administrator shall be applied to mean this state, the department and the director, respectively.

B. The department may adopt rules for the administration of the federal program. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with 40 Code of Federal Regulations part 279. The department shall require an annual registration fee established by rule for handlers of used oil that are required to obtain a United States environmental protection agency identification number pursuant to 40 Code of Federal Regulations part 279. The department shall deposit, pursuant to sections 35-146 and 35-147, fees in the solid waste fee fund established by section 49-881.

C. The following requirements apply in addition to 40 Code of Federal Regulations part 279:

1. A used oil collection center, as defined in 40 Code of Federal Regulations part 279, shall register with the department by obtaining an identification number from the department. A request for an identification number shall include:

(a) The company name.

(b) The name of the owner of the company.

(c) The mailing address and telephone number of the company.

(d) The location of the collection center.

(e) A description of the type of used oil activity at the company.

2. A person who sends used oil fuel to a person who burns the used oil fuel for energy recovery shall certify to the burner that the used oil fuel has been analyzed or otherwise tested for compliance with the used oil specifications in 40 Code of Federal Regulations part 279.

3. Each used oil fuel transporter, used oil fuel marketer and used oil processor and re-refiner, as defined in 40 Code of Federal Regulations part 279, shall submit to the department a written report annually. The report shall be submitted within thirty days after the end of the calendar year to which the report applies, and it shall contain a copy of the tracking information required to be kept pursuant to 40 Code of Federal Regulations part 279 or a summary of such tracking information on a reporting form supplied by the department.

4. Each person who burns used oil fuel in devices identified in 40 Code of Federal Regulations section 279.61(a)(1) through (3) shall submit to the department a written annual report. The report shall be submitted to the department by February 1 for the previous calendar year and shall contain the following information:

(a) The name, address and telephone number of the person reporting.

(b) The name, address and telephone number of the burner facility.

(c) The United States environmental protection agency identification number of the burner facility.

(d) The total volume of on-specification used oil burned.

(e) The period being reported.

(f) The total volume of self-generated used oil burned on site.

(g) The total volume of used oil fuel burned.

(h) A summary of the tracking information required to be kept pursuant to 40 Code of Federal Regulations part 279.

5. Used oil fuel marketers and used oil fuel burners shall label all tanks that store on-specification used oil with the words "on-specification used oil". The department may sample and test used oil or used oil fuel to determine its properties or characteristics as prescribed in this article and rules adopted pursuant to this article.

6. A household "do-it-yourselfer" used oil generator, as defined under 40 Code of Federal Regulations part 279, shall send its used oil to a "do-it-yourselfer" collection station, a household hazardous waste collection center, a used oil collection center, a used oil fuel marketer or a used oil processor or refiner.

D. In administering this section or in adopting or administering rules pursuant to this section, the department shall maintain the level of discretion that is permitted pursuant to applicable federal rules.

E. Any client names or related identifying data required to be submitted to the department pursuant to this section are confidential.

49-836. Solid waste landfill disposal fees

A. Each operator of a solid waste landfill or facility shall make the fee payments required by this section as determined by the department. Monies from fees shall be deposited in the recycling fund established by section 49-837 and the solid waste fee fund established by section 49-881. Fees shall be calculated and paid as follows until the effective dates of rules adopted pursuant to subsection G of this section:

1. A disposal fee of $.25 for each six cubic yards of uncompacted solid waste, $.25 for each three cubic yards of compacted solid waste or $.25 per ton of solid waste received at landfills regulated by the department. From and after June 30, 2005, all $.25 collected in disposal fees shall be deposited in the recycling fund.

2. A solid waste landfill that receives only waste generated on site shall compute the fee by using one of the following methods:

(a) By actual volume or weight.

(b) By estimate based on landfill capacity use, volume or number of waste loads or any other reasonable means for approximating the volume or weight of disposed waste.

3. Facilities that generate waste from recycling solid waste, effluent from a secondary wastewater treatment plant or wastewaters shall pay one-half of the fee calculated pursuant to paragraph 1 of this subsection. The maximum annual amount paid by a facility for on-site disposal of waste generated from recycling shall not exceed $15,000. The fee for these facilities may be computed based on the dry or dewatered weight or volume of the waste generated from recycling.

B. Each fee payment shall be accompanied by a form prepared and furnished by the department and completed by the operator. The form shall state the total volume or weight of solid waste disposed of at that landfill during the payment period and shall provide any other information deemed necessary by the department. The form shall be signed by the operator.

C. A person who for a fee disposes of waste in a solid waste landfill that is not regulated by the department shall keep accurate records of the waste disposed of in those landfills and shall remit a fee to the department at the same rate and in the same manner as provided in subsection A of this section or rules adopted pursuant to subsection G of this section.

D. For solid waste landfills that are operated pursuant to section 49-741 and that do not have on-site operators or scales, the fee shall be based on a formula that multiplies the population of the political subdivisions served by the landfill by $.07. From and after June 30, 2005, all fees shall be deposited in the recycling fund. The fee shall be paid in the same manner as provided in subsection A of this section or rules adopted pursuant to subsection G of this section.

E. This section or any rules adopted pursuant to subsection G of this section do not apply to:

1. Persons disposing of a load containing less than six cubic yards of uncompacted solid waste or three cubic yards of compacted solid waste.

2. A site used solely for the reclamation of land through the introduction of landscaping rubble or inert material.

3. Material produced in connection with a mining or metallurgical operation.

F. Solid waste management service companies and agencies affected by the landfill disposal fees established by this section may adjust the fees charged to customers by passing through to the customers the additional costs.

G. The department shall establish by rule the solid waste landfill disposal fees.

49-855. Best management practices; fee; criteria

A. The director shall adopt, by rule, best management practices for the treatment, storage and disposal of each waste to be designated as a special waste pursuant to this article.

B. In adopting best management practices for a special waste, the director shall consider:

1. The availability, effectiveness, economic feasibility and technical feasibility of alternative handling or management technologies and practice.

2. The potential nature and severity of the effect on public health and the environment resulting from the special waste.

3. Circumstances under which the practices shall be applied, including climatological, geological and hydrogeological conditions.

4. Consistency with other federal and state laws, rules and regulations in an effort to avoid practices or requirements that duplicate, are inconsistent with or result in dual regulation under other federal and state laws, rules and regulations.

C. The best management practices adopted by the director shall contain procedures necessary for the protection of public health and the environment for the transportation, treatment, storage and disposal of special wastes. Additional items to be contained in the best management practices shall include at least:

1. A designated time of not less than ninety days beyond which a waste may not be stored.

2. A fee for each ton of special waste that is transported to a facility in this state for treatment, storage or disposal. The department shall establish by rule a fee for each ton of special waste that is transported to a facility in this state for treatment, storage or disposal, including a maximum fee. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

D. The director may adopt special waste best management practices that apply to the treatment, storage or disposal of those wastes that are not regulated as hazardous wastes under federal laws or regulations.

E. The director may enact special waste best management practices that are more stringent than federal laws or regulations that govern polychlorinated biphenyls pursuant to the toxic substances control act (15 United States Code section 2605) if the director determines in writing that:

1. The additional regulation is necessary to protect public health or the environment.

2. There is a scientific basis for the additional regulation based on appropriate environment testing and analytical data.

3. The additional regulation is technically feasible.

F. This section does not preclude the director from adopting best management practices under this article, which incorporate management practices applicable to the treatment, storage or disposal of those wastes that are not regulated as hazardous wastes under federal laws or regulations.

G. The department shall require facilities that generate, transport or receive special waste to pay an annual fee. The department shall establish by rule an annual fee. The department shall deposit, pursuant to sections 35-146 and 35-147, fees in the solid waste fee fund established by section 49-881. Facilities that pay registration fees pursuant to section 49-747 are exempt from the fee prescribed by this section.

49-857. Special waste management plans; director; approval; fee

A. Except as provided in section 49-858, a facility that plans to manage special waste for treatment, storage or disposal shall apply for and obtain approval of the director.

B. The application shall include all of the following:

1. A complete solid waste facility plan pursuant to section 49-762 that includes a special waste management plan component that complies with best management practices adopted pursuant to section 49-855 for each special waste for that portion of the facility that is engaged in the treatment, storage or disposal of special waste.

2. Evidence of compliance with permit filing requirements pursuant to this title.

C. The director shall collect from the applicant a reasonable fee based on the state's total costs in processing the plan. The director may amend an existing rule or adopt a new rule to establish criteria for those costs. Monies from fees shall be deposited in the solid waste fee fund established by section 49-881.

D. A facility at which the treatment, storage or disposal of special waste occurs only as a result of an episodic release at that facility shall not be subject to the special waste management plan requirements of this section. The special waste shall be managed pursuant to applicable best management practices.

44-1301. Definitions

In this article, unless the context otherwise requires:

1. "Damage" means any cracking, bubbling, cutting, chunking or separation of the tire sidewall or tread, including exposed body ply or belt material, or any visible deterioration of the tire bead or inner liner.

2. "Improper repair" means any puncture repair of damage larger than one-fourth of an inch, any puncture repair to a tire sidewall, the tread shoulder or belt edge area, or a puncture repair that has not been both sealed or patched on the inside and repaired with a cured rubber stem through to the outside.

3. "Motor vehicle" means any automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination or other vehicle operated on the roads of this state, used to transport persons or property and propelled by power other than muscular power, but motor vehicle does not include traction engines, vehicles that run only on a track, bicycles or mopeds.

4. "Off road motor vehicle" means any automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, heavy equipment used in mining or metallurgical operations, agriculture, construction or earth moving, airplanes or other vehicles operated off the roads of this state, used to transport persons or property or used for agricultural, construction or earth moving activities and propelled by power other than muscular power, but off road motor vehicle does not include traction engines, vehicles that run only on a track, bicycles or mopeds.

5. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations, as well as a natural person.

6. "Waste tire" means a motor vehicle tire that is no longer suitable for its original intended purpose because of wear, damage, improper repair or manufacturer's recall.

7. "Waste tire collection site" means a site where waste tires are collected before being offered for recycling or reuse and where more than five hundred tires are kept on site on any day.

8. "Wear" means the reduction of the major groove depth of the tire to two thirty-seconds of an inch.

49-701. Definitions

In this chapter, unless the context otherwise requires:

1. "Administratively complete plan" means an application for a solid waste facility plan approval that the department has determined contains each of the components required by statute or rule but that has not undergone technical review or public notice by the department.

2. "Administrator" means the administrator of the United States environmental protection agency.

3. "Advanced recycling":

(a) Means a manufacturing process to convert post-use polymers and recovered feedstocks into basic hydrocarbon raw materials, feedstocks, chemicals, monomers, oligomers, plastics, plastics and chemical feedstocks, basic and unfinished chemicals, crude oil, naphtha, liquid transportation fuels and coatings and other products such as waxes and lubricants through processes that include pyrolysis, gasification, depolymerization, catalytic cracking, reforming, hydrogenation, solvolysis and other similar technologies.

(b) Does not include solid waste management, processing, incineration or treatment.

4. "Advanced recycling facility":

(a) Means a facility that receives, stores and converts post-use polymers and recovered feedstocks using advanced recycling.

(b) Includes a manufacturing facility that is subject to applicable provisions of law and department rules for air quality, water quality and waste and land use.

(c) Does not include a solid waste facility, processing facility, treatment facility, materials recovery facility, recycling facility or incinerator.

5. "Beneficial use of CCR" means that all of the following conditions apply:

(a) The CCR provides a functional benefit.

(b) The CCR substitutes for the use of a virgin material, which conserves natural resources that would otherwise need to be obtained through practices such as extraction.

(c) The use of the CCR meets relevant product specifications, regulatory standards or design standards when available, and when those standards are not available, the CCR is not used in excess quantities.

(d) For unencapsulated use of CCR involving placement of twelve thousand four hundred tons or more on the land in nonroadway applications, the user demonstrates, keeps records and provides documentation on request, that environmental releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

6. "CCR pile":

(a) Means any noncontainerized accumulation of solid, nonflowing CCR that is placed on the land.

(b) Does not include a CCR that is beneficially used off-site.

7. "CCR program approval" means United States environmental protection agency approval of the Arizona coal combustion residuals program in accordance with 42 United States Code section 6945(d)(1).

8. "CCR surface impoundment" or "impoundment" means a natural topographic depression, man-made excavation or diked area, which is designed to hold an accumulation of CCR and liquids, and the CCR unit treats, stores or disposes of CCR.

9. "Closed solid waste facility" means any of the following:

(a) A solid waste facility other than a CCR unit that ceases storing, treating, processing or receiving for disposal solid waste before the effective date of design and operation rules for that type of facility adopted pursuant to section 49-761.

(b) A public solid waste landfill that meets any of the following criteria:

(i) Ceased receiving solid waste before July 1, 1983.

(ii) Ceased receiving solid waste and received at least two feet of cover material before January 1, 1986.

(iii) Received approval for closure from the department after completing a postclosure care and monitoring plan as required by permit or plan approval.

(c) A public composting plant or a public incinerating facility that closed in accordance with an approved plan.

10. "Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

11. "Coal combustion residuals landfill" or "CCR landfill":

(a) Means an area of land or an excavation that receives CCR and that is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine or a cave.

(b) Includes sand and gravel pits and quarries that receive CCR or CCR piles and any use of CCR that does not meet the definition of a beneficial use of CCR.

12. "Coal combustion residuals unit" or "CCR unit":

(a) Means any CCR landfill, CCR surface impoundment or lateral expansion of a CCR unit or a combination of more than one of these units.

(b) Includes both new and existing units, unless otherwise specified.

13. "Construction debris" means solid waste derived from the construction, repair or remodeling of buildings or other structures.

14. "County" means:

(a) The board of supervisors in the context of the exercise of powers or duties.

(b) The unincorporated areas in the context of area of jurisdiction.

15. "Demolition debris" means solid waste derived from the demolition of buildings or other structures.

16. "Depolymerization" means a manufacturing process through which post-use polymers are broken into smaller molecules such as monomers and oligomers or raw, intermediate or final products, plastics and chemical feedstocks, basic and unfinished chemicals, crude oil, naphtha, liquid transportation fuels, waxes, lubricants, coatings and other basic hydrocarbons.

17. "Discharge" has the same meaning prescribed in section 49-201.

18. "Existing CCR landfill" means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced before October 19, 2015 and that receives CCR on or after October 19, 2015. For the purposes of this paragraph, "commenced construction" means the owner or operator of a CCR landfill has obtained the federal, state and local approvals or permits necessary to begin physical construction and a continuous on site, physical construction program had begun before October 19, 2015.

19. "Existing CCR surface impoundment" means a CCR surface impoundment that meets one of the following conditions:

(a) Receives CCR both before and after October 19, 2015.

(b) For which construction commenced before October 19, 2015 and that receives CCR on or after October 19, 2015. For the purposes of this paragraph, "commenced construction" means the owner or operator of a CCR surface impoundment has obtained the federal, state and local approvals or permits necessary to begin physical construction and a continuous on site, physical construction program had begun before October 19, 2015.

20. "Existing solid waste facility" means a solid waste facility other than a CCR unit that begins construction or is in operation on the effective date of the design and operation rules adopted by the director pursuant to section 49-761 for that type of solid waste facility.

21. "Facility plan" means any design or operating plan for a solid waste facility or group of solid waste facilities other than a permit issued under article 11 of this chapter.

22. "40 C.F.R. part 257, subparts A and B" means 40 Code of Federal Regulations part 257, subparts A and B in effect on May 1, 2004.

23. "40 C.F.R. part 258" means 40 Code of Federal Regulations part 258 in effect on May 1, 2004.

24. "Gasification" means a manufacturing process through which recovered feedstocks are heated and converted into a fuel and gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw, intermediate and final products, including plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil and other fuels, including ethanol and transportation fuel, that are returned to economic utility in the form of raw materials, products or fuels.

25. "Household hazardous waste" means solid waste as described in 40 Code of Federal Regulations section 261.4(b)(1) as incorporated by reference in the rules adopted pursuant to chapter 5 of this title.

26. "Household waste":

(a) Means any solid waste, including garbage, rubbish and sanitary waste from septic tanks, that is generated from households, including single and multiple-family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

(b) Does not include construction debris, landscaping rubble or demolition debris.

27. "Inert material":

(a) Means material that satisfies all of the following conditions:

(i) Is not flammable.

(ii) Will not decompose.

(iii) Will not leach substances in concentrations that exceed applicable aquifer water quality standards prescribed by section 49-201, paragraph 22 when subjected to a water leach test that is designed to approximate natural infiltrating waters.

(b) Includes concrete, asphaltic pavement, brick, rock, gravel, sand, soil and metal, if used as reinforcement in concrete.

(c) Does not include special waste, hazardous waste, glass or other metal.

28. "Land disposal" means placement of solid waste in or on land.

29. "Landscaping rubble" means material that is derived from landscaping or reclamation activities and that may contain inert material and not more than ten percent by volume of vegetative waste.

30. "Lateral expansion" means, for the purposes of the coal combustion residuals program established pursuant to article 11 of this chapter, a horizontal expansion of the waste boundaries of an existing CCR landfill or existing CCR surface impoundment made after October 19, 2015.

31. "Management agency" means any person responsible for the day-to-day operation, maintenance and management of a particular public facility or group of public facilities.

32. "Medical waste":

(a) Means any solid waste that is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.

(b) Includes discarded drugs.

(c) Does not include hazardous waste as defined in section 49-921 other than very small quantity generator waste.

33. "Municipal solid waste landfill" means any solid waste landfill that accepts household waste, household hazardous waste or very small quantity generator waste.

34. "New solid waste facility" means a solid waste facility that begins construction or operation after the effective date of design and operating rules that are adopted pursuant to section 49-761 or article 11 of this chapter for that type of solid waste facility.

35. "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way if the entrance and exit between the properties are at a crossroads intersection and access is by crossing the right-of-way and not by traveling along the right-of-way. Noncontiguous properties that are owned by the same person and connected by a right-of-way that is controlled by that person and to which the public does not have access are deemed on site property. Noncontiguous properties that are owned or operated by the same person regardless of right-of-way control are also deemed on site property.

36. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations, as well as a natural person.

37. "Post-use polymer":

(a) Means a plastic to which all of the following apply:

(i) The plastic is derived from any industrial, commercial, agricultural or domestic activities.

(ii) The plastic is not mixed with solid waste or hazardous waste on site or during processing at the advanced recycling facility.

(iii) The plastic's use or intended use is as a feedstock for manufacturing crude oil, fuels, feedstocks, blendstocks, raw materials or other intermediate products or final products using advanced recycling.

(iv) The plastic has been sorted from solid waste and other regulated waste but may contain residual amounts of solid waste such as organic material and incidental contaminants or impurities such as paper labels and metal rings.

(v) The plastic is processed at an advanced recycling facility or held at an advanced recycling facility before processing.

(b) Does not include solid waste or municipal waste.

38. "Process" or "processing" means the reduction, separation, recovery, conversion or recycling of solid waste.

39. "Public solid waste facility" means a transfer facility and any site owned, operated or used by any person for the storage, processing, treatment or disposal of solid waste that is not generated on site.

40. "Pyrolysis" means a manufacturing process through which post-use polymers are heated in the absence of oxygen until melted, are thermally decomposed and are then cooled, condensed and converted into valuable raw, intermediate and final products, including plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil and other fuels, including ethanol and transportation fuel, that are returned to economic utility in the form of raw materials, products or fuels.

41. "Recovered feedstocks":

(a) Means one or more of the following materials that have been processed so that they may be used as feedstock in an advanced recycling facility:

(i) Post-use polymers.

(ii) Materials for which the United States environmental protection agency has made a nonwaste determination pursuant to 40 Code of Federal Regulations section 241.3(c) or has otherwise determined are feedstocks and not solid waste.

(b) Does not include:

(i) Unprocessed municipal solid waste.

(ii) Materials that are mixed with solid waste or hazardous waste on site or during processing at an advanced recycling facility.

42. "Recycling facility" means a solid waste facility that is owned, operated or used for the storage, treatment or processing of recyclable solid waste.

43. "Salvaging" means the removal of solid waste from a solid waste facility with the permission and in accordance with rules or ordinances of the management agency for purposes of productive reuse.

44. "Scavenging" means the unauthorized removal of solid waste from a solid waste facility.

45. "Solid waste facility" means a transfer facility and any site owned, operated or used by any person for the storage, processing, treatment or disposal of solid waste, very small quantity generator waste or household hazardous waste but does not include the following:

(a) A site at which less than one ton of solid waste that is not household waste, household hazardous waste, very small quantity generator waste, medical waste or special waste and that was generated on site is stored, processed, treated or disposed in compliance with section 49-762.07, subsection F.

(b) A site at which solid waste that was generated on site is stored for ninety days or less.

(c) A site at which nonputrescible solid waste that was generated on site in amounts of less than one thousand kilograms per month per type of nonputrescible solid waste is stored and contained for one hundred eighty days or less.

(d) A site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material and that is not a waste tire facility, a transfer facility or a recycling facility.

(e) A site where sludge from a wastewater treatment facility is applied to the land as a fertilizer or beneficial soil amendment in accordance with sludge application requirements.

(f) A closed solid waste facility.

(g) A solid waste landfill that is performing or has completed postclosure care before July 1, 1996 in accordance with an approved postclosure plan.

(h) A closed solid waste landfill performing a onetime removal of solid waste from the closed solid waste landfill, if the operator provides a written notice that describes the removal project to the department within thirty days after completion of the removal project.

(i) A site where solid waste generated in street sweeping activities is stored, processed or treated before disposal at a solid waste facility authorized under this chapter.

(j) A site where solid waste generated at either a drinking water treatment facility or a wastewater treatment facility is stored, processed, or treated on site before disposal at a solid waste facility authorized under this chapter, and any discharge is regulated pursuant to chapter 2, article 3 of this title.

(k) A closed solid waste landfill where development activities occur on the property or where excavation or removal of solid waste is performed for maintenance and repair if the following conditions are met:

(i) When the project is completed there will not be an increase in leachate that would result in a discharge.

(ii) When the project is completed the concentration of methane gas will not exceed twenty-five percent of the lower explosive limit in on-site structures, or the concentration of methane gas will not exceed the lower explosive limit at the property line.

(iii) Protection has been provided to prevent remaining waste from causing any vector, odor, litter or other environmental nuisance.

(iv) The operator provides a notice to the department containing the information required by section 49-762.07, subsection A, paragraphs 1, 2 and 5 and a brief description of the project.

(l) Agricultural on-site disposal as provided in section 49-766.

(m) The use, storage, treatment or disposal of by-products of regulated agricultural activities as defined in section 49-201 and that are subject to best management practices pursuant to section 49-247 or by-products of livestock, range livestock and poultry as defined in section 3-1201, pesticide containers that are regulated pursuant to title 3, chapter 2, article 6 or other agricultural crop residues.

(n) Household hazardous waste collection events held at a temporary site for not more than six days in any calendar quarter.

(o) Wastewater treatment facilities as defined in section 49-1201.

(p) An on-site single-family household waste composting facility.

(q) A site at which five hundred or fewer waste tires are stored.

(r) A site at which mining industry off-road waste tires are stored or are disposed of as prescribed by rules in effect on February 1, 1996, until the director by rule determines that on-site recycling methods exist that are technically feasible and economically practical.

(s) A site at which underground piping, conduit, pipe covering or similar structures are abandoned in place in accordance with applicable state and federal laws.

(t) An advanced recycling facility that converts recovered feedstocks to manufacture raw materials and intermediate and final products.

46. "Solid waste landfill":

(a) Means a facility, area of land or excavation in which solid wastes are placed for permanent disposal.

(b) Does not include a land application unit, surface impoundment, injection well, coal combustion residuals landfill, compost pile or waste pile or an area containing ash from the on-site combustion of coal that does not contain household waste, household hazardous waste or very small quantity generator waste.

47. "Solid waste management" means the systematic administration of activities that provide for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

48. "Solid waste management plan" means the plan that is adopted pursuant to section 49-721 and that provides guidelines for the collection, source separation, storage, transportation, processing, treatment, reclamation and disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

49. "Solvolysis":

(a) Means a manufacturing process through which post-use polymers are purified with the aid of solvents, allowing additives and contaminants to be removed and producing polymers capable of being recycled or reused without first being reverted to a monomer.

(b) Includes hydrolysis, aminolysis, ammonoloysis, methanolysis and glycolysis.

50. "Storage" means the holding of solid waste.

51. "Transfer facility":

(a) Means a site that is owned, operated or used by any person for the rehandling or storage for ninety days or less of solid waste that was generated off site for the primary purpose of transporting that solid waste.

(b) Includes those facilities that include significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

52. "Treatment" means any method, technique or process used to change the physical, chemical or biological character of solid waste so as to render that waste safer for transport, amenable for processing, amenable for

storage or reduced in volume.

53. "Vegetative waste":

(a) Means waste derived from plants, including tree limbs and branches, stumps, grass clippings and other waste plant material.

(b) Does not include processed lumber, paper, cardboard and other manufactured products that are derived from plant material.

54. "Very small quantity generator waste" means hazardous waste in quantities as defined by rules adopted pursuant to section 49-922.

55. "Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

56. Waste tire does not include tires used for agricultural purposes as bumpers on agricultural equipment or as ballast to maintain covers at an agricultural site, or any tire disposed of using any of the methods in section 44-1304, subsection D, paragraphs 1, 2, 3, 5 through 8 and 11 and means any of the following:

(a) A tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

(b) A tire that is removed from a motor vehicle and is retained for further use.

(c) A tire that has been chopped or shredded.

57. "Waste tire facility" means a solid waste facility at which five thousand or more waste tires are stored outdoors on any day.

49-801. Definitions

In addition to the definitions in 40 Code of Federal Regulations, part 279, the following definitions apply to this article:

1. "Off-specification used oil" means used oil which exceeds any of the allowable levels in 40 Code of Federal Regulations section 279.11.

2. "On-specification used oil" means used oil that is not off-specification used oil.

3. "Used oil" includes oil that has been contaminated as a result of handling, transportation or storage.

49-831. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means this state or a state agency, county, municipality or political subdivision.

2. "Collection" means the act of picking up post-consumer secondary materials from homes, businesses, governmental agencies, institutions or industrial sites.

3. "Consumer" means a person who purchases a product for use, consumption or any purpose other than resale.

4. "Municipal or county solid waste" means any garbage, trash, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant or pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material but not including domestic sewage or hazardous waste.

5. "Municipality" means an incorporated city or town with a population of more than five thousand persons.

6. "Natural resources" means the supply of materials, not made by man, that are used for making goods.

7. "Paper" means newspaper, high grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic material containing not more than ten percent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.

8. "Plastic container" means a container that is hermetically sealed or made airtight with a metal or plastic cap with a minimum wall thickness of not less than 0.010 inches and that is composed of thermoplastic synthetic polymeric materials.

9. "Plastics" means a specific polymer or mix of polymers in combination with various amounts of plasticizers, stabilizers, colorants, fillers and other organic and inorganic compounds.

10. "Post-consumer material":

(a) Means a discard generated by a business or residence that has fulfilled its useful life.

(b) Includes discards from industrial or manufacturing processes.

11. "Process" or "processing" means the reduction, separation, recovery, conversion or recycling of solid waste.

12. "Recyclable material" means post-consumer materials that may be collected, separated, cleansed, treated or reconstituted and returned to the economic stream in the form of raw materials or products.

13. "Recycled" means a process by which post-consumer materials are collected, separated, cleansed, treated or reconstituted and returned to the economic stream in the form of raw materials or products.

14. "Recycled materials" means those materials that have been separated from the municipal or county solid waste stream, processed and returned to the economic stream in the form of raw materials or products.

15. "Recycling" means the process of collecting, separating, cleansing, treating and reconstituting post-consumer materials that would otherwise become solid waste and returning them to the economic stream in the form of raw material for reconstituted products that meet the quality standards necessary to be used in the marketplace, but does not include incineration or other similar processes.

16. "Recycling program" means the program prepared and adopted by this state and approved by the department to implement the recycling program goals of this state or a program prepared and adopted by a county or municipality of this state.

17. "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

18. "Source reduction" means any action that causes a net reduction in the generation of solid waste and includes reducing the use of nonrecyclable materials, replacing disposable materials and products with reusable materials and products, reducing packaging, reducing the amount of yard waste generated, establishing garbage rate structures with incentives to reduce the amount of wastes that generators produce and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic and other materials in the manufacturing process. Source reduction does not include the following:

(a) Steps taken after the material becomes solid waste or actions that would impact air or water resources in lieu of land, such as incineration or pyrolysis or burning for energy recovery.

(b) Replacing disposable material or products with alternative disposable materials or products.

19. "Storage" means the containment or holding of materials, either on a temporary or long-term basis, in such a manner as not to constitute disposal of such materials.

20. "Used oil" means any oil that has been refined from crude or synthetic oil and, as a result of use, storage or handling, that has become unsuitable for its original purpose due to the presence of impurities or loss of original properties but that may be suitable for further use and may be economically recyclable.

21. "Waste generator" means a person, business, government agency or other organization that produces solid waste.

22. "Waste stream" means the solid waste material output of a community, region or facility.

23. "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

24. "Wastepaper" means recyclable paper and paperboard, including high grade office paper, computer paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and corrugated paper.

49-851. Definitions; applicability

A. In this article, unless the context otherwise requires:

1. "Best management practices" means a method or combination of methods that is used in the treatment, storage and disposal of a special waste and that achieves the maximum practical cost effective protection of public health or the environment.

2. "On site" means at or on the same or geographically contiguous property that may be divided by public or private right-of-way, provided the entrance and exit between the properties are at a crossroads intersection and access is by crossing as opposed to travel along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that that person controls and to which the public does not have access are also on-site property.

3. "Petroleum contaminated soils" means soils excavated for storage, treatment or disposal containing benzene, toluene, ethylbenzene, total xylenes, acenaphthylene, anthracene, benz(A)anthracene, benzo(A)pyrene, benzo(B)fluoranthene, benzo(K)fluoranthene, cyrysene, dibenz(A, H)anthracene, fluoranthene, fluorene, indenopyrene, naphthalene or pyrene in concentrations in excess of levels determined by the director pursuant to section 49-152 to protect the public health and the environment.

4. "Shipper" means a person who transports a special waste in commerce.

5. "Special waste" means a solid waste as defined in section 49-701.01, other than a hazardous waste, that requires special handling and management to protect public health or the environment and that is listed in section 49-852 or in rules adopted pursuant to section 49-855. Special waste does not include return flows from irrigated agriculture, medical waste, used oil or by-products of a regulated agricultural activity, as defined in section 49-201, that are subject to best management practices under section 49-247, by-products of livestock, range livestock and poultry as defined in section 3-1201, pesticide containers regulated pursuant to title 3, chapter 2, article 6 or waste that contains radioactive materials that are subject to a permit or regulation under the atomic energy act of 1954 (42 United States Code section 2011; 68 Stat. 919), as amended, or title 30, chapter 4.

6. "Storage" means the holding of special waste for a period of not more than one year unless a lesser period of time is designated by the director pursuant to best management practices rules. The director shall not designate a storage time of less than ninety days.

B. Defining or categorizing any material as a special waste under this article shall not affect the duty of care or breach of that duty for a cause of action for personal injury or for a workers' compensation claim arising from the handling of any materials.

City of Phoenix

November 21, 2024

Governor's Regulatory Review Council
100 N. 15th Ave #305
Phoenix, AZ 85007

Re: Phoenix's Comments on Solid Waste Fee Increases Rulemaking

Dear Members of the Governor's Regulatory Review Council (GRRC),

The City of Phoenix (Phoenix) participated in the Arizona Department of Environmental Quality's (ADEQ) stakeholder process and expressed concerns regarding the solid waste fee increase rulemaking. Recently, ADEQ has made changes to the proposed rule in response to stakeholder input, and we appreciate ADEQ's willingness to work toward compromises that address many of the concerns raised by Phoenix and others.

While we acknowledge that the revised rules are an improvement over the initial proposal, Phoenix still has concerns regarding the significant fee increases and the need to ensure that all fees collected are used exclusively for their intended purposes. Below are the updates ADEQ has made in response to stakeholder concerns:

- **Solid Waste Landfill Disposal Fees:** There will be no CPI increases on the landfill disposal fees after the initial fee increase.
- **CPI Adjustment Date:** The CPI Adjustment date was set from January 2026 to July 2026 and would follow annually every July.
- **CPI Cap:** The CPI for solid waste fees will be capped at 4% with advanced notification of the CPI increase amount.

Phoenix remains concerned about the need to ensure that fees collected are used to support the intended regulatory budget needs of ADEQ and implementation of a recycling grant program. While we are supportive of ADEQ's programs and the need to increase fees to administer a robust recycling grant program, the concern remains, these funds will instead be reallocated toward other state budget needs as we have seen in the past.

Again, Phoenix appreciates ADEQ's efforts to compromise and address stakeholder concerns. The updated rule improves the initial proposal and reflects ADEQ's commitment to collaboration. However, concerns remain regarding the financial impacts of the fee increases and the need for enhanced transparency and accountability to ensure fees are used for their intended purposes.

Thank you for considering our feedback. We appreciate GRRC's efforts to ensure Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities.

Respectfully,

Felipe Moreno

Felipe Moreno
Public Works Director
City of Phoenix

D-9.

DEPARTMENT OF WATER RESOURCES
Title 12, Chapter 15

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

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 5, 2024; December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: November 18, 2024

SUBJECT: **DEPARTMENT OF WATER RESOURCES**
Title 12, Chapter 15

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

Staff Update:

This rulemaking was previously considered at the October 29, 2024 Study Session and November 5, 2024 Council Meeting. Due to robust discussion, and to ensure sufficient time was given to accept comments from the public pursuant to A.R.S. § 41-1052(I), at the November 5, 2024 Council Meeting the Council voted to table consideration of this rulemaking to the current meeting cycle. Council staff has continued to collect public comments submitted directly to the Council. Public comments through November 18, 2024 have been included in the materials for the Council's reference. Additionally, on November 8, 2024, Council staff received a follow-up memorandum from the Department of Water Resources (Department) in response to questions/concerns raised during the last meeting cycle, which is also included in the final materials for the Council's reference.

Summary:

This regular rulemaking from the Department seeks to amend seven (7) rules in Title 12, Chapter 15, Article 7 regarding Assured and Adequate Water Supply. Specifically, the

Department indicates the rule changes seek to address challenges that water providers face in pursuing a new Designation of 100-year Assured Water Supply (Designation) under the current rules. The Department indicates this rulemaking affects the Phoenix and Pinal active management areas (AMAs) only. The Department states it does not repeal nor substantively revise any current Assured Water Supply (AWS) rules. Rather, the Department indicates the rulemaking 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 AWS model. The Department indicates the alternative designation of Assured Water Supply (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.

1. <u>Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?</u>

The Department cites both general and specific statutory authority for these rules.

2. <u>Do the rules establish a new fee or contain a fee increase?</u>

This rulemaking does not establish a new fee or contain a fee increase.

3. <u>Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?</u>

The Department indicates it did not review any study relevant to this rulemaking.

4. <u>Summary of the agency's economic impact analysis:</u>

The ADAWS rulemaking seeks to create an additional pathway for water providers to voluntarily seek a designation. The rulemaking creates a new opportunity for water providers who had previously faced challenges in achieving designation and reduces the regulatory burden for designation modification via an expedited process. Benefits for those directly affected by ADAWS are expected to be substantial when compared to a designation under the traditional rules or no designation: the monetary benefit afforded to providers through the groundwater allowance volume granted in ADAWS is significant and addresses a key financial barrier that has challenged water providers seeking to achieve a traditional designation of assured water supply. The costs associated with the rulemaking are expected to be minimal; however, state agencies such as the Department may incur costs when hiring additional staff to process an increase in applications.

5. <u>Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?</u>

The Department has determined that any costs associated with ADAWS are outweighed by the benefits when compared to the available alternatives.

6. What are the economic impacts on stakeholders?

Persons who will be directly affected by, bear the costs of, or directly benefit from this Assured Water Supply rule modification for the Phoenix and Pinal active management areas (AMAs) include state agencies such as the Department; political subdivisions, including counties, cities, and towns that seek economic development or provide municipal water, private municipal water providers, as well as the Central Arizona Groundwater Replenishment District; land subdivision developers; and homeowners and homebuyers in the Phoenix and Pinal AMAs. Generally, costs for those directly affected by the voluntary pursuit of an ADAWS are expected to be minimal compared to the currently available alternatives. State agencies may incur costs when hiring additional staff necessary to process an increase in applications.

7. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?

The Department indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register on August 23, 2024 and the Notice of Final Rulemaking now before the Council for consideration.

8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

The Department indicates it received 233 total comments related to this rulemaking, with 226 of those comments in support of the ADAWS rules. The Department indicates four comments asked questions or raised concerns with the rulemaking, and three comments were neutral. The Department indicates 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. The comments received by the Department and the Department's responses are summarized in Section 12 of the Preamble to the Notice of Final Rulemaking. Additionally, copies of the public comments received have been included in the final materials for the Council's reference. Council staff believes the Department has adequately responded to public comments related to this rulemaking.

9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially

similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates, while the rules do not require a permit, they do describe the criteria for a designation of Assured Water Supply, which is a license. The Department states a designation is a general permit authorized under A.R.S. § 45-576. As such, Council staff believes the Department is in compliance with A.R.S. § 41-1037.

10. <u>Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?</u>

The Department indicates there is no corresponding federal law.

11. <u>Conclusion</u>

This regular rulemaking from the Department seeks to amend seven (7) rules in Title 12, Chapter 15, Article 7 regarding Assured and Adequate Water Supply. Specifically, the Department indicates the rule changes seek to address challenges that water providers face in pursuing a new Designation of 100-year Assured Water Supply (Designation) under the current rules. The Department indicates this rulemaking affects the Phoenix and Pinal AMAs only. The Department states it does not repeal nor substantively revise any current AWS rules. Rather, the Department indicates the rulemaking 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 AWS model. The Department indicates 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.

The Department is seeking an immediate effective date for these rules pursuant to A.R.S. § 41-1032(A)(4) and (5) stating the rules provide a benefit to the public and a penalty is not associated with a violation of the rule and the Department is adopting rules that are less stringent than the rules that is currently in effect and do not have an impact on the public health, safety, welfare or environment, and do not affect the public involvement and public participation process. Council staff believes the Department has provided adequate justification for an immediate effective date.

Council staff has received numerous written comments pursuant to A.R.S. § 41-1052(I) both in support of, and opposition to, the Department's rulemaking. Copies of these written comments are included with the final materials for the Council's reference. As additional comments are submitted, they will also be circulated to the Council members.

Council staff recommends approval of this rulemaking.

KATIE M. HOBBS
GOVERNOR

THOMAS BUSCHATZKE
DIRECTOR

ARIZONA DEPARTMENT OF WATER RESOURCES
1110 WEST WASHINGTON STREET, SUITE 310
PHOENIX, ARIZONA 85007
602.771.8500
AZWATER.GOV

REVISED October 15, 2024
ORIGINALLY SUBMITTED October 7, 2024

Sent via email to grrc@azdoa.gov

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Re: Arizona Department of Water Resources Rule Package

Dear Governor's Regulatory Review Council:

Pursuant to A.A.C. R1-6-202(A), the Arizona Department of Water Resources ("ADWR") submits this final rule package to the Council for placement on the Council Agenda. This rule package amends R12-15-701, R12-15-710, R12-15-711, R12-15-720, R12-15-723, R12-15-724 and R12-15-725. ADWR requests that these rules be placed on the agenda for the Council's November 5, 2024 meeting.

ADWR provides the following information regarding the rule package, as required by A.A.C. R1-6-202(A):

a) The record for this rulemaking closed on September 23, 2024 at 5:00 p.m.

b) All the amendments are justified under A.R.S. § 41-1027(A)(7) because they will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

c) The rulemaking activity does not relate to ADWR's five-year rule review report.

d) ADWR certifies that that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.

e) Additionally, the following documents are included in this rule package as required by A.A.C. R1-6-202(A)(1)(e) in the following order:

1. This cover letter.
2. The Notice of Final Rulemaking required by A.A.C. R1-6-202, including the preamble, table of contents for the rulemaking, and text of each rule (**attachment A1**).
3. The written comment received by the agency concerning the rulemaking (**attachment A2**).

4. A copy of the general and specific statutes authorizing the rule, including relevant statutory definitions (**attachment A3**).
5. The Economic, Small Business and Consumer Impact Statement (**attachment A4**).
6. The Certification of submission of the Economic, Small Business and Consumer Impact Statement to the JLBC (**attachment A5**).
7. A copy of the existing rules (**attachment A6**).
8. Written approval for an exemption to the rulemaking moratorium from Patrick J. Adams, Water Policy Advisor for Governor Hobbs dated August 7, 2024 (**attachment A7**).
9. Written final approval for an exemption to the rulemaking moratorium from Patrick J. Adams, Water Policy Advisor for Governor Hobbs dated October 7, 2024 (**attachment A8**).

Thank you for your assistance in this matter. If you have any questions or need additional information, please contact Emily Petrick, ADWR Deputy Counsel, at (602) 771-8472.

Sincerely,

Thomas Buschatzke
Director

Enclosures: as listed

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:

Name:	Emily Petrick
Title:	Deputy Counsel
Division:	Legal
Address:	Arizona Department of Water Resources 1110 West Washington, Suite 310 Phoenix, Arizona 85007
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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 CAGRD. 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, CAGRD reporting, and billing individual customers for CAGRD 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 CAGRD; (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 commentors 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 commenters 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 commenters 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 commenters 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 commenters 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 commenters 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 CAGRD 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 CAGRD 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 CAGRD, and are therefore outside the scope of this rulemaking. ADWR thanks CAGRD 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 CAGRD 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 CAGRD 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 CAGRD 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
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6. No change
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11. No change
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    b. No change
12. No change
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36. No change
37. No change
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    c. No change
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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.

~~65~~66. "Subdivision" has the same meaning as prescribed in A.R.S. § 32-2101.

~~66~~67. "Superfund site" means the site of a remedial action undertaken according to CERCLA.

~~67~~68. "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.

~~68~~70. "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.

~~69~~71. "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;
~~3~~4. 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~~
~~4~~5. 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 CAGRD; 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 CAGRD.
   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.
5. 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

ASSURED WATER SUPPLY RULE MODIFICATIONS TO PROVIDE AN ALTERNATIVE PATH TO DESIGNATION OF A 100-YEAR ASSURED WATER SUPPLY (ADAWS) IN THE PHOENIX AND PINAL AMAS AND TO ALLOW CERTIFICATE OF ASSURED WATER SUPPLY APPLICANTS IN THE PHOENIX AND PINAL AMAS TO COMMINGLE WATER SUPPLIES FOR A LIMITED TERM

A.R.S. § 41-1055(B)
ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

The Governor's Water Policy Council (Council) was established by Executive Order on January 9, 2023, and encompassed a diverse group of stakeholders appointed by Governor Hobbs including representation from agriculture, water providers, Tribes, executive agency cabinet officers, cities, the business community, industry, conservation organizations, university experts, and the Arizona legislature. Two committees were established by the Council, including the Assured Water Supply (AWS) Committee. The AWS Committee was charged to review and make recommendations for changes to Assured Water Supply policies to address the challenges revealed by Assured Water Supply modeling projections, while continuing to (1) strengthen the integrity of the Assured Water Supply program, (2) protect consumers and aquifers, and (3) ensure future growth is not reliant on mined groundwater.

At the September 27, 2023, AWS Committee meeting, the Arizona Department of Water Resources (ADWR, or the Department) introduced an "Alternative Path to Designation of a 100-year Assured Water Supply" (ADAWS) proposal, which was drafted by the Department in coordination with a group of Council members and stakeholders. On November 29, 2023, the Department provided the Governor's Office with five policy recommendations from the Governor's Water Policy Council. The Council's AWS Program recommendations provided a launch point and guidance for drafting new rules to provide a means to obtaining a Designation of AWS in Active Management Areas (AMAs) where unmet demand exists in the model projection. Among these recommendations was the proposed ADAWS, which requires amendments to Arizona Administrative Code (A.A.C.) R12-15-701, et. sec.

The ADAWS rulemaking seeks to address challenges that some water providers face in pursuing a new Designation of 100-year Assured Water Supply (DAWS) under the current rules. The ADAWS concept creates a path for water providers historically reliant on groundwater to grow incrementally on alternative supplies while reducing groundwater mining. The Department expects the rulemaking to have long-term economic benefits while also providing greater long-term protection for groundwater supplies by promoting the use of renewable water resources, requiring replenishment of new groundwater uses, and reducing overall groundwater reliance through time.

The 1980 Groundwater Management Act created four AMAs (the Phoenix, Pinal, Prescott and Tucson AMAs) where groundwater use is actively managed. In 1994, a fifth AMA (the Santa Cruz

AMA), was created out of a portion of the Tucson AMA. Each AMA has a management goal, and the Department is required by statute to adopt AWS rules to assist in the attainment of that goal. The Department manages the AWS program within the five AMAs pursuant to A.R.S. § 45-576. The program is designed to sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning. The AWS program requires new subdivisions[1] to demonstrate a 100-year water supply is legally, physically, and continuously available before recording plats or selling parcels within an AMA. The groundwater supply must also be consistent with the management goal and management plan of the AMA.

The Assured Water Supply Program requires the Department to evaluate the available water supply for 100 years. ADWR uses basin-scale groundwater flow models to evaluate groundwater conditions in the AMAs based on the rules, policies, and requirements of the Assured Water Supply Program. Recent updates to the ADWR Phoenix and Pinal AMA groundwater models project a shortfall in groundwater supplies in the 100-year which indicate unmet AWS demands. Under current rules, ADWR may not approve the issuance of designations and certificates that rely on groundwater if the groundwater model submitted with the application does not demonstrate physical availability of groundwater.

Groundwater physical availability issues in the Phoenix and Pinal AMA models primarily affect fast-growth areas in portions of the AMAs that rely on groundwater. These are the areas in which most new development has been occurring. Many of these communities were initially able to develop because they were able to prove physical availability of groundwater, subject to replenishment. For new growth to occur under current conditions and the traditional AWS rules, developers in these areas will need to find renewable supplies (such as surface water or reclaimed water), the municipality or water provider must secure enough renewable supplies to become designated without the inclusion of groundwater in the portfolio.

In addition to the overriding issue of physical availability, many water providers desiring to obtain a DAWS face further hurdles to doing so, including:

- Assuming legacy groundwater use from subdivisions that predate the AWS rules or assuming uses that fall outside of the subdivision definition requires the provider to make the groundwater use consistent with the AMA management goal. Taking on the necessary replenishment costs can be significant.
- Limited renewable supplies.
- Historic barriers to cost recovery for the expense and effort of securing renewable supplies and applying for designation.
- When the original AWS rules were promulgated, existing providers at the time were allowed to transition from reliance on groundwater to renewable supplies under a DAWS, including certain exemptions and groundwater allowances.

[1] The AWS requirement applies to each new "subdivision" as defined by A.R.S. § 32-2101(56).

- When considering an AWS application, ADWR must consider all water supplies in a system that are relied on to serve 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. Therefore, an application for a certificate or a designation under the current rules that could not demonstrate physical availability of groundwater would be required to demonstrates that there are sufficient non-groundwater supplies to satisfy all the demands in the municipal provider's system in order to satisfy the physical availability criteria.

The Department is proposing the ADAWS rule modification to enable undesignated providers that currently serve groundwater to existing customers to become designated as having an assured water supply. ADAWS requires the use of alternative supplies to serve new growth and incentivizes providers to replace current groundwater uses with alternative supplies. Expanding the options to obtain a DAWS allows water providers in the Phoenix and Pinal AMAs to develop long-term solutions to water supply requirements as such supplies are necessary to meet the demands of the community it serves while reducing the overall reliance on groundwater and long-term impact on the aquifer.

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. In the development of a path to designation, members of the AWS Committee of the Council recognized the importance of replacing existing groundwater use in addition to acquiring new supplies for growth. ADAWS enables the applicant to demonstrate an assured water supply by showing it will reduce groundwater use over time. Moreover, while ADAWS includes 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, which the proposed rulemaking incentivizes.

While it is uncertain which water providers or developers might apply for a determination under these modified rules, the amendments are expected to contribute to the realization of short-term and long-term economic benefits. The Department expects that the amendments will result in reduced costs to some persons and political subdivisions over the short term and that they have the potential to reduce total groundwater withdrawals over the long term. Due to the often-long lead times required to secure alternative water supplies, it could take time for potentially eligible providers to apply for designation through this path, but they will have certainty to begin making the necessary arrangements. Overall, the Department expects these rule amendments to assist the local community in overcoming the hurdles of development in areas with limited physical availability of groundwater while maintaining and promoting the goals and standards relating to groundwater use in the Phoenix and Pinal AMAs.

The Department believes the proposed amendments strike an appropriate balance between preserving the existing AWS rules, which promote sustainability of water supplies for future

development, and providing a new path for development that will ultimately be less reliant on groundwater, furthering the management goals of the AMAs.

1. An Identification of the Rulemakings

This Economic Impact Statement addresses two rulemakings proposed by the Department. While both rulemakings below are described in this EIS because of similarities, neither is dependent on the other in terms of moving forward.

- The ADAWS 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 where physical availability of groundwater cannot be demonstrated in the AWS model. The ADAWS concept creates a voluntary path to designation for water providers reliant on groundwater to grow incrementally on alternative supplies while reducing groundwater mining.

- The commingling rulemaking applies to Certificate of Assured Water Supply (CAWS) applicants in the Phoenix and Pinal AMAs and amends the AWS rules to create an additional, voluntary alternative path for an applicant to obtain a certificate based on non-groundwater sources commingled with groundwater where physical availability of groundwater cannot be demonstrated in the AWS model.

This rulemaking intends to facilitate a path for economic development that strikes a balance between continuing to meet the State's long-term groundwater management goals and continuing to drive new growth toward renewable water supply reliance. Historically, developers and water providers could more readily utilize groundwater to initiate a DAWS or secure a CAWS. Absent the ADAWS rulemaking, the high cost of developing sufficient renewable supplies and infrastructure to meet the DAWS or CAWS application requirements may be overly burdensome to developers and water providers and the current AWS rules would otherwise provide few other options for such applicants to responsibly and equitably facilitate growth.

To create the ADAWS path, the Department is amending A.A.C. R12-15-710 to add section H, which provides an alternative designation path in the Phoenix and Pinal AMAs which would enable designations to include groundwater that is grandfathered and could not otherwise be included under the current AWS rules. The Department is also amending A.A.C. R12-15-710 to add section I, which provides that, for an application to modify an ADAWS, the grandfathered groundwater included in the ADAWS volume will be reduced by the volume of groundwater utilized since the previous ADAWS was issued and also reduced by a portion equal to 25% of any new alternative water supply to be included in the modified designation. The amendments in A.A.C. R12-15-710(H) through (K) present the full concept for a new ADAWS path, including that the applicant must enroll the ADAWS as a member service area (MSA) of the Central Arizona Groundwater Replenishment District (CAGRD) and therefore, all excess groundwater use

pursuant to the ADAWS would be subject to replenishment. The Department is also modifying A.A.C. R12-15-711(D) to establish that the initial term of an ADAWS is no greater than 15 years.

In addition to the primary ADAWS amendments to A.A.C. R12-15-710, the Department is making conforming amendments to A.A.C. R12-15-701 and R12-15-711 to consistently incorporate the provisions of the ADAWS. A.A.C. R12-15-724 specifies that the 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 Department's amendment of A.A.C. R12-15-725(A)(2)(e) also adds an alternative calculation of a groundwater allowance for providers seeking an ADAWS in the Pinal AMA only and adds detail on how the groundwater allowance would be uniquely calculated based on 2023 groundwater deliveries plus any remaining groundwater allowance associated with an issued CAWS that will be served by the ADAWS applicant. A.A.C. R12-15-723(G)(b) now provides that under an ADAWS, extinguishment credits (ECs) that were already pledged to a CAWS can only be applied to groundwater delivered to that original CAWS subdivision to ensure the original subdivision remains the beneficiary of the ECs.

To improve one of the AWS criteria requirements for both the ADAWS and current DAWS, the Department is amending A.A.C. R12-15-720(C)(3) to allow all AWS applicants the ability to prove the financial capability criteria by submitting “evidence demonstrating that financing mechanisms are in place to construct adequate delivery, storage, and treatment works in a timely manner.” Prior to this rulemaking, this provision had only been available to is a city or town.

To further improve the AWS program, with the Department’s addition of A.A.C. R12-15-711(J), all DAWS holders gain the ability to request an expedited modification of a designation if the modification is only being sought to include additional renewable water supplies, allowing providers to incrementally and more easily add supplies and enable additional growth in their service area.

In conjunction with the ADAWS path, the Department is amending A.A.C. R12-15-704 to add section N, which allows a source of supply that is not groundwater or stored water outside the area of impact, but is served through a distribution system that is commingled with those supplies to be considered physically available supply for applications for CAWS in the Pinal and Phoenix AMAs if the following apply:

1. The application must include proposed non-groundwater source of supply of equal volume to the committed demand of the proposed subdivision
2. Proposed supply must be a new supply not already served in calendar year 2023
3. The proposed supply would equal 25% of the estimated demand to substitute for existing use of groundwater or stored supply outside of the area of impact

No AWS rules are repealed through this rulemaking.

For a complete description of the amendments to the AWS rules, refer to the Arizona Administrative Register, Volume 30, Issue 34, August 23, 2024.

2. Persons Who Will Be Directly Affected by, Bear the Costs of, or Directly Benefit from the Rulemaking

Throughout this Impact Statement, the rule amendments are compared to obtaining an AWS determination under the existing rules, which remain in effect, or having no AWS determination.

Because rule changes to enable ADAWS and limited-term commingling of water supplies for CAWS represent additional, alternative paths to applying for and securing an AWS, and as they are not a requirement nor a revision to existing paths to an AWS, the Department expects there will be minimal change in the costs borne by those affected.

It is difficult to predict how many applications may be received and the extent of the growth that will be enabled through these amendments; however, to the extent these amendments are availed, they will provide significant to substantial benefits by enabling new development supported by sustainable water supplies while continuing to protect finite groundwater supplies.

Entities which will directly affected by, bear the costs of, or directly benefit from the AWS rule amendments in 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 Central Arizona Groundwater Replenishment District (CAGRD);[2] (3) subdivision developers; and (4) homeowners and homebuyers in the Phoenix and Pinal AMAs.

a. *Persons or Entities Directly Benefiting from the Rulemaking*

- **The State**. The proposed rulemaking reduces barriers to determinations of assured water supply and enables a path for sustainable growth, while upholding the integrity of the Assured Water Supply program, protecting consumers and aquifers, and ensuring future growth is not reliant on mined groundwater.

- **Landowners in undesignated areas**. There is a potential benefit that lands that would not otherwise be developed due to minimal water resource options might become more attractive to developers under this rulemaking.

- **Water Providers**. Providers in the Phoenix and Pinal AMAs face several barriers to designation; most significantly, current model projections show a lack of physical

[2] The CAGRD is a division of the Central Arizona Water Conservation District, which is a multi-county water conservation district and a political subdivision. *See* Arizona Constitution, Art. 13, § 7; A.R.S. § 48-3702.

availability of groundwater. Meanwhile, non-AWS supply uses can continue, further depleting limited groundwater supplies. Water providers (public or private) will benefit from the additional path to designation because it enables providers to make the necessary agreements and investments in alternative supplies and infrastructure as service area demands develop, and an ADAWS will include a potentially significant volume of groundwater allowance that is not required to be replenished to assist in managing replenishment costs associated with the designation. ADAWS will allow additional subdivision growth within the provider's service area, while halting previously unconstrained non-AWS groundwater use, protecting and reducing groundwater use over time and providing more water security for the provider, residents, and businesses. The commingling modification to the rules will provide a pathway for development while a provider is working toward a designation, providing them the benefit of serving new homes in the short-term while reducing the risk of potential groundwater shortage.

- **Subdivision developers**. Those who develop and build new subdivisions may have new options to obtain an assured water supply determination, particularly if they are unable to obtain an AWS determination based on groundwater under current rules. Likewise, if a provider is able to obtain a designation under ADAWS, subdivision developers within the service area(s) covered by the ADAWS will no longer need to obtain a separate AWS determination.

- **Existing designated providers**. Existing designated providers desiring to add renewable supplies and expedite their modification applications will benefit from having an expedited regulatory review, as the entire designation is not reviewed, only the additional demands and the relevant water supply that the provider is seeking to add to its designation. This will spare providers the significant investment of staff time and expense involved in the full modification process and allow incremental growth as they are able to acquire additional supplies, even if they are relatively small volumes.

- **Businesses, including small businesses, that support homebuilding**. Those who provide materials and services to support the homebuilding industry may see relatively moderate benefits following this rulemaking, to the extent that homebuilding to support population growth pressure continues and local and regional businesses that support homebuilding are re-engaged.

- **Homeowners**. Persons who purchase new homes in subdivisions with AWS determinations based on renewable supplies and replenished groundwater. Because ADAWS provides an additional path to subdivision development, it could increase inventory of new homes available while also ensuring that new homes have a 100-year assured water supply determination. Those persons who purchase homes in these subdivisions would receive lower property tax assessments if the water provider

were a CAGRD member service area because the homeowner is not directly responsible for paying a CAGRD replenishment assessment. Under the new commingling rules, homeowners are likely to experience lower property tax assessments because the home's replenishment obligation will be reduced by the inclusion of commingled renewable supplies.

- **CAGRD**. Depending on developer and water provider participation in the new path to an AWS determination, the CAGRD may see a reduction in its replenishment obligations through time as groundwater reliance is reduced, potentially lowering administrative and renewable water supply costs and providing for additional capacity to replenish excess groundwater on behalf of its remaining members under its current Plan of Operation.

b. ***Persons Directly Bearing the Costs of the Rulemaking***

- **ADWR.** The Department will require additional staff to review and process ADAWS and CAWS applications as well as expedited DAWS and ADAWS modification applications and to manage annual reporting and accounting requirements.

- **CAGRD**. If CAGRD's membership and/or annual groundwater replenishment obligations increase as a result of the rulemaking, particularly if water providers are slower to develop renewable supplies to replace groundwater reliance, CAGRD may incur increased costs associated with acquiring additional replenishment supplies and may require increased administrative capacity to meet its statutory obligations. However, under such a scenario, CAGRD would also generate additional enrollment fees, activation fees, and annual assessments, helping to offset and manage the added costs.

- **ADAWS water ratepayers and homeowners served by CAWS with commingled groundwater**. Under the ADAWS, the costs associated with the acquisition of water supplies, infrastructure, enrollment in the CAGRD, and the expense t to replenish groundwater supplies to meet existing requirements for consistency with management goal under ADAWS would be borne by the utility ratepayers. These factors and the associated costs are highly variable and unique to the provider and its circumstances. How these costs are distributed among the ratepayers is determined by the utility through ratemaking processes, which are specific to the provider and community. This is no different than under the existing rules. However, ADAWS includes a larger groundwater allowance as compared to traditional designation rules. Both the ADAWS and the commingling modification include a requirement to offset a certain amount of existing groundwater use with new alternative water supplies. There will be an additional cost passed on to ratepayers (ADAWS) or to homeowners (commingling) as initial groundwater supplies are offset

with renewable supplies. The long-term security, however, provided by renewable supplies and the value of the groundwater allowance will reduce the impact.

- **Groundwater users.** The rulemakings would enable new development to move forward in a service area even if there are groundwater physical availability issues in the groundwater model. Through ADAWS, a groundwater allowance will also be granted, meaning that some groundwater pumping could proceed without replenishment (as compared to traditional designation), which could have some initial impacts on the aquifer. However, negative impacts are mitigated under ADAWS because some previously unreplenished groundwater uses will be replenished, and only groundwater pumping that would already continue absent ADAWS will continue under ADAWS, reducing groundwater pumping within the service area over time.

3. Cost – Benefit Analysis

These amendments create no new requirements; they provide additional voluntary options for water providers and developers to secure determinations of AWS. Water providers and developers may continue to rely on existing rules.

The ADAWS rulemaking creates an additional pathway for water providers to seek a designation; they may still seek designation under the existing rules or continue without a designation if they choose. Likewise, the proposed commingling rule amendment creates an additional pathway to obtain a certificate of assured water supply; the option to include apply for a certificate under the existing rules or not remains. Therefore, specific costs, benefits and impacts of this rulemaking were assessed against these two alternatives—pursuing a determination of AWS under the existing rules or not pursuing a determination.

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 analyzed the monetary value afforded to providers through the groundwater allowance volume granted in ADAWS relative 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.

An ADAWS provider that newly enrolls in CAGRD as an MSA, as required by this rulemaking (A.A.C. R12-15-710(K)), may utilize a portion of the groundwater allowance to avoid reporting its groundwater deliveries to its service area as "excess groundwater" requiring CAGRD

replenishment. The value of the groundwater allowance is substantial in that it could be used to directly replace a portion of the ADAWS provider's reported replenishment obligation to the CAGRD.

For every acre-foot of groundwater delivered that is not subject to CAGRD minimum reporting requirements and for which the provider may utilize the groundwater allowance to meet consistency with the management goal, the provider will benefit from a cost savings equal to the per-acre-foot replenishment fee. In other words, since the groundwater allowance may serve as a direct substitute for a portion of the replenished groundwater obligation, the groundwater allowance will have an equivalent value to the CAGRD replenishment fee in the year it is utilized.

The CAWCD Board-approved 2024 replenishment fee for an MSA in the Phoenix AMA is $856 per acre-foot of excess groundwater use, a rate that is projected to increase by approximately 4% per year through 2029. In the Pinal AMA, the 2024 replenishment fee is $875 per acre-foot of excess groundwater use in the Pinal AMA, projected to increase by approximately 3.6% per year through 2029.

The 2024 value of a theoretical groundwater allowance of 272,000 acre-feet—a realistic example—is equivalent to over $232 million based on CAGRD's published rates. As described above, CAGRD rates are projected to continue to increase, which could result in the groundwater allowance being of greater value over time, given that a provider will utilize the allowance over time.

Benefits for those directly affected by the proposed CAWS (A.A.C. R12-15-704) rule amendments are expected to be substantial when compared to obtaining a certificate under the existing rules or having no certificate. The proposed rule changes allow for additional development within a water provider's service area by allowing a certificate based on supplies commingled with groundwater while also requiring the water provider to obtain an additional volume of new alternative supplies (30% of the certificate demand) to replace the water provider's existing groundwater deliveries.

Generally, costs for those directly affected by voluntary pursuit of an ADAWS or CAWS obtained with commingled groundwater supplies are expected to be minimal compared to the currently available alternatives. However, because the proposed ADAWS rules create a path forward for water providers in AMAs where there is insufficient physical availability of groundwater, create an expedited process for all designated providers that reduces the regulatory and financial burden for designation modification, and may re-open the pursuit of CAWS applications in the Phoenix and Pinal AMAs, state agencies such as ADWR will incur costs to hire additional staff necessary to process an increase in applications.

Any costs associated with the proposed rule amendments are outweighed by the benefits when compared to the available alternatives. The rulemaking will have a long-term benefit to groundwater supplies in the Phoenix and Pinal AMAs and will support Assured Water Supply

program objectives to sustain the state's economic health by preserving groundwater resources, promoting long-term water supply planning, and strengthening water security.

a. *Probable Benefits and Costs to Agencies*

- **ADWR**:
  Benefits. The proposed rulemaking supports the Department's mission to safeguard the health, safety and economic welfare of the public by protecting, conserving and enhancing Arizona's water supplies in a bold, thoughtful and innovative manner by reducing barriers to determinations of assured water supply and enabling a path for sustainable growth, while upholding the integrity of the Assured Water Supply program, protecting consumers and aquifers, and ensuring future growth is not reliant on mined groundwater.

- *Costs.* The ADAWS and commingling rules will have multiple impacts to future staff workload as compared to the traditional rules or no options for an AWS determination. Since these rule amendments present new, optional paths, their precise impact on staffing needs is unknown. New ADAWS applications will be limited in number, but the application process will require substantial staff time, expertise, and legal review. The expedited modification option has the potential to increase the frequency of review of new alternative supplies for ADAWS applications as well as for traditional DAWS holders; however, the expedited modification requires only a partial review as compared to the traditional modification of a DAWS, which required a review of the entirety of the designation application. The Department also anticipates the commingling rule change may increase the number of certificate applicants because it creates a path to development despite the unmet demands in the Phoenix and Pinal groundwater AWS models. The rule amendments will create additional reporting, accounting, and oversight for staff to manage. Overall, depending on how extensively providers use these alternative paths, the Department may need to add one to two additional staff.

- **Other Agencies**:
  Benefits.
  No benefits to other agencies were identified. However, in the absence of these alternatives, AWS applicants will likely continue to face challenges obtaining AWS determinations under current rules, and the perception that insufficient water exists for businesses and development in the Phoenix and Pinal AMAs would have repercussions for the state. These alternative paths enable development on renewable supplies while reducing groundwater mining in the long-term, continuing

Arizona's legacy of secure water supplies and sustainable development and economic growth in an arid environment

Costs. ADWR has not identified specific costs to other agencies but notes that there could be an increase in public reports issued by Arizona Department of Real Estate.

b. *Probable Benefits and Costs to Political Subdivisions*

- **Municipal Water Providers:**

Benefits. Water providers seeking an AWS determination will benefit from the ADAWS in comparison to the traditional rules or no AWS determination, particularly due to (1) additional paths to acquire an AWS determination, (2) the ability to include a physically available volume of groundwater in the determination without the need for a supporting groundwater model run, and (3) a longer timeline during which to acquire and develop water supplies to support the demands of its service area. The rulemaking could effectively enable a municipal water provider to recover costs for the expense and effort of securing renewable supplies over a longer period of time, and to do so more equitably by distributing the costs of such supplies on its current water customers and on future customers through future growth.

Costs. Compared to the traditional rules, there are no identified additional costs. If there were, a provider would be likely to utilize the traditional DAWS path. Water providers that choose the ADAWS path over the traditional designation rules or no determination will incur additional or new groundwater replenishment costs due to the requirement to enroll as a Member Service Area of the CAGRD. However, as described above, the provider may offset these costs by utilizing the groundwater allowance provided under this rulemaking, which would be a very substantial savings.

Water providers utilizing the ADAWS and commingling rules will be required to reduce existing groundwater pumping. However, the new paths provided by the rulemaking are less costly compared to the traditional rules, because under those rules, if insufficient physical availability of groundwater exists, the provider would only be able to secure an AWS determination if they develop alternative, non-groundwater supplies to cover 100% of the water demands in the determination for 100 years. Overall, for a water provider seeking to serve new developments or a subdivision development, the benefits of ADAWS and commingling outweigh the costs and provide an alternative path if they are not able to obtain a designation or certificate under current rules.

- **CAGRD**:

  Benefits. Under the rule amendments, CAGRD could see a reduction in Member Lands (MLs) served by CAWS if a new ADAWS provider subsumes those certificates in a new Member Service Area (MSA). Administering services for MSAs typically requires less staff time for CAGRD compared to the administration of MLs. Per a CAGRD staff analysis presented to the CAWCD Board, CAGRD expects the rule amendments will result in a lower future replenishment obligation compared to its operations under the traditional rules or no designation, due in large part to the groundwater offset requirement when new alterative water supplies are added during an ADAWS modification.

  Costs. CAGRD has seen little to no new subdivision enrollment in the Phoenix and Pinal AMAs since the Department's release of the groundwater model projections showing unmet AWS demands. With this new rulemaking, CAGRD's administrative costs may increase in the near-term if applications, enrollments, and excess groundwater deliveries increase pursuant to new determinations, and replenishment costs may increase to accommodate new members requiring replenishment services in the near term. However, CAGRD has sufficient mechanisms in place to develop the rate and fees necessary to cover the costs of its services.

  Political subdivisions:

  Benefits. Compared to the traditional rules or no AWS determination, political subdivisions may experience an increase in sales tax and property tax revenue under the rulemaking if homebuilding and its associated support industries are able to expand or remain active in the Phoenix and Pinal AMAs.

  Costs. None identified.

c. *Probable Benefits and Costs to Business, Including Small Business*

- **Business, Including Small Business:**

  Benefits. These amendments do not directly impact business, including small business, as they do not impose additional requirement, but rather amend the rules to enable additional options that have advantages over the existing rules.

  Businesses and small businesses that directly develop or are linked to the development of subdivisions will benefit over the short-term from greater certainty that development can proceed and benefit over the long term from the economic growth fostered by the amendments.

  Costs. None identified.

- **Private water providers**:

  Impacts would be the same as those for cities and towns that are water providers. See Part 3(b) "Municipal Water Providers" above.

- **Developers:**

  Benefits. Applicants that are unable to demonstrate physical availability of groundwater with groundwater modeling would not be able to obtain a certificate or designation of AWS based on groundwater under the current rules and could not proceed with development. These amendments provide a pathway forward.

  ADAWS will enable additional water providers to receive designations with some physically available groundwater supplies, allowing additional development to occur within their service areas in the near term and averting the necessity of applying for certificates.

  The commingling rule modifications will enable additional subdivision growth under certificates through June 30, 2027, allowing time to shift to a full designation under ADAWS and providing opportunity for developers to construct subdivisions and sell new homes in the short term. This rule amendment has the effect of allowing additional development to move forward if it could not move forward under traditional rules.

  Costs. The water provider will decide how water supply costs are passed through to a developer. Compared to the traditional rules or no designation, these alternatives could allow for additional development.

d. ***Probable Benefits and Costs to Private Persons and Consumers***

- **Homeowners, lessees, and renters:**

  Benefits. Homeowners, lessees, and renters may see benefits in subdivisions served by ADAWS determinations as (1) former CAGRD ML homes may no longer be responsible for direct payment of CAGRD annual assessments, (2) the water provider need not recoup the cost from current water ratepayers of a 100% alternative water supply portfolio to achieve a designation, as under the traditional rules (without a groundwater model demonstrating physical availability of groundwater), and (3) the ADAWS provider provides the ratepayer with greater water security as it reduces its reliance on groundwater, develops alternative supplies, and is responsible for excess groundwater replenishment through the CAGRD. Additionally, a homeowner, lessee

or renter may have increased housing options within an ADAWS water provider's service area, compared to the traditional rules or no designation.

The commingling rule modifications will provide benefits because water providers will replace some existing groundwater pumping with alternative supplies, which will provide greater water security.

Costs. Compared to the alternative of not securing a designation, the water provider could incur and pass on to its water ratepayers the water acquisition and replenishment costs. However, the rule amendments create a new groundwater allowance option that is intended to offset replenishment costs, to the benefit of homeowners/water users.

- **Landowners:**

  Benefits. In some instances, properties in undesignated areas might become more attractive to developers under this rulemaking compared to the traditional rules since it potentially expands developable areas that were previously more limited in water supply options, benefiting owners of lands that could not otherwise be developed.

  Costs. None identified.

This Cost-Benefit Analysis shows that the probable costs to agencies, political subdivisions, business, private persons and consumers resulting from adoption of the proposed rule changes would be minimal. The Department believes the rulemaking will result in greater net benefits to the state and other parties largely stemming from continued growth and development in the Phoenix and Pinal AMAs while at the same time addressing groundwater use concerns and further upholding the Department's long-term groundwater management goals in the Phoenix and Pinal AMAs.

4. Probable Impact on Private and Public Employment in Business, Agencies, and Political Subdivisions

The Department anticipates a significant positive impact on employment as a result of this rulemaking, which provides new AWS alternatives to public and private water providers and previously designated water providers. The probable impacts may be positive for developers, private and public water providers, and cities and towns, as the rulemaking allows a path to economic development that will not be reliant on groundwater in the long-term and will uphold the Department's standards to reach the management goal of each AMA.

5. Probable Impact on Small Business

See Part 3(c) "Probable Benefits and Costs to Business, Including Small Business" above.

6. Probable Effect on State Revenues

Excise, income, property, and sales taxes are expected remain stable to increasing longer-term as growth increases at a sustainable pace in the Pinal and Phoenix AMAs. No new fees or charges are included in this rulemaking. Absent this rulemaking, the State could see decreased tax revenues due to the current AWS rules providing limitations to develop on groundwater, and therefore limiting the geographic extent of new developments to those areas that have previously secured an AWS determination. The Department will need to increase staff as a consequence of adopting the rulemaking.

7. Less Intrusive or Less Costly Alternative Methods of Achieving the Rulemaking

The Department provides qualitative descriptions of each alternative's impacts below because it is not possible to obtain adequate data regarding the specific monetary impacts of each alternative discussed.

- **No Action**: A no action alternative would fail to achieve the objectives of the rulemaking, the Governor's Water Policy Council, and the stakeholders who contributed to the development of the proposed amendments. Without the rulemaking, developers and water providers could continue to face substantial barriers to securing determinations of AWS, and opportunities for additional development in the Phoenix and Pinal AMAs could be limited.

  This rulemaking demonstrates the state's ability to adapt to water supply constraints and enable additional growth, while maintaining the integrity of the Assured Water Supply program, protecting consumers and aquifers, and ensuring future growth is not reliant on mined groundwater.

- **Delay rulemaking**: Maintain current AWS rules, unchanged. However, Governor Hobbs, her Water Policy Council, and stakeholders identified an urgent need for solutions to the challenges revealed by the AWS modeling, and these amendments are the solutions developed in response to that. Water providers have communicated that this rulemaking needs to be implemented immediately and that without a clear path forward, they will not be able to justify making the necessary investments in acquiring supplies and constructing necessary infrastructure. These costs will only increase as the rulemaking is delayed and would provide no benefit.

8. Description of Data on Which the Rule Modification is Based

Because this rulemaking amends the AWS rules to create new paths to an AWS application that providers or developers may voluntarily pursue, the Department could not evaluate quantitative impacts to water users, services areas, or aquifer conditions without being overly speculative on

which areas or water users in the Phoenix and Pinal AMAs might apply for these determinations and the types of water supplies or infrastructure that could be included. The proposed amendments are based on the Department's understanding of the limitations faced by developers and water providers under the current AWS rules, recent groundwater modeling projections, the recommendations provided by the Governor's Water Policy Council and its expert Council members, and the Department's Assured Water Supply program's ongoing objective to provide consumer protection and sustain the state's economic health by preserving groundwater resources and promoting long-term water supply planning.

DATE

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, which we believe will create a sustainable water supply in the Pinal AMA.

Through this letter, I am expressing my direct support for the new rules and encouraging their adoption as soon as possible.

As a Pinal County business owner, I know it is important to have a vibrant economy that inspires growth and attracts more high quality workers who can become valued members of our community.

A stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering the overall economic health and quality of life in our community.

I genuinely appreciate this initiative, as new water rules will mark a crucial step forward for all of Pinal County.

Sincerely,

NAME

BUSINESS

CITY OF CASA GRANDE | STRONGER UNITED
510 E. Florence Blvd., Casa Grande, Arizona 85122
(520) 421-8600 | www.CasaGrandeAZ.gov

August 27, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

As the Mayor of Casa Grande I want to thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders (especially here in Pinal County) to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in in Casa Grande and Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of us here in Casa Grande and Pinal County,

Sincerely,

Craig H. McFarland
Mayor City of Casa Grande
510 E. Florence Blvd
Casa Grande, AZ 85122
Craig_mcfarland@casagrandeaz.gov
(M) 520-251-0687

8/29/24

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Blake Wilsford
Pinal County resident

Greenstone

Greenstone
7227 N 16th Street, suite 236
Phoenix, AZ 85020

September 3, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a company Greenstone has intimate knowledge of Arizona's assured water supply rules and Arizona water markets. With this background we support these rules. Without these changes we feel there will be unintended negative consequences to Pinal AMA groundwater supplies. Some of these negative impacts are outlined below:

- It is an accepted fact that converting land from agricultural use to municipal and industrial leads to far less groundwater withdrawals. Under the status quo agricultural lands not part of an existing Designation of Assured Water Supply (DAWS) or a Certificate of Assured Water Supply (CAWS) are essentially condemned to stay in high groundwater use agricultural. It is a misconception that these lands will eventually transition from agriculture as water levels fall. In fact there are numerous examples throughout the west that show agricultural water users will continue to invest in deeper wells (Ogallala Aquifer, Eastern New Mexico, Eastern Arizona, Central Valley California). This is already happening in the Pinal AMA where irrigation districts and individuals are making long-term investments into deeper and larger wells.

- Parties that have significant investments into land will find ways to develop their property in a manner that skirts Assured Water Supply rules. This skirting will lead to more unaccounted-for groundwater withdrawals.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Mike Malano
Managing Director, Greenstone

Tony Smith
President and CEO
PO Box 904, Florence, AZ 85132
Cell: 480.239.9391
Tony@PinalPartnership.com
www.pinalpartnership.com

September 3, 2024

Ms. Sharon Scantlebury,
Docket Supervisor, Arizona Department of Water Resources
1110 W. Washington Street, Suite 310
Phoenix, AZ 85007

Re: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Pinal Partnership is a non-profit membership organization formed in 2005 that leads responsible economic development in Pinal County by joining public, private and non-profit efforts. We have 24 Board of Directors and over 200 members that represent a broad range of industries and communities in Pinal County which allows us to find problems and work on solutions, collectively.

As President/CEO of Pinal Partnerhip, I am expressing Pinal Partnership's support for developing new Assured Water Supply Rules (ADAWS) and encourage their adoption as soon as possible. The ADAWS allows water providers who are currently not designated as having an Assured Water Supply to secure an Assured Water Supply. Existing residents and businesses will benefit from this, because the ADAWS requires water providers to offset existing groundwater pumping with a new non-groundwater supply as new developments come online creating a sustainable water supply for the Pinal AMA that in turn has a direct impact on all aspects of our economy in Pinal County.

On behalf of Pinal Partnership's Board of Directors and its members, we appreciate all the efforts of the Governor's Office and ADWR staff. These new Assured Water Supply rules are an important step forward. If you require additional information, please feel free to contact me @ 480 239-9391 or tony@pinalpartnership.com.

Sincerely,

Tony Smith

Tony Smith, President/CEO Pinal Partnership

Ranchette Investors, LLC
7549 N 20th St
Phoenix, AZ 85020

September 3, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Ranchette Investors LLC has owned land since 2006 which it plans to develop. If these rules are not adopted, we will move forward with plans to develop that will not include subdividing, but nevertheless use groundwater. This groundwater will be unaccounted for.

We feel these rule changes will allow us to develop responsibility under Assured Water Supply rules and offset any groundwater we use, or allow our water provider to acquire other renewable supplies to meet our needs. This type of development will be of much greater economic value to Pinal County and will also benefit the aquafer by accounting for groundwater use if any.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Mike Malano
Manager, Ranchette Investors LLC

ROSE LAW GROUPpc
RICH ▪ CARTER ▪ FISHER

Jordan R. Rose
7144 E. Stetson Drive, Suite 300
Scottsdale, AZ 85251
Phone 480.505.3939 Fax 480.505.3925
JRose@RoseLawGroup.com
www.RoseLawGroup.com

September 3, 2024

***Via Electronic Mail*:**

Sharon Scantlebury, Docket Supervisor Arizona Dept. of Water Resources
docketsupervisor@azwater.gov
602-771-8472

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

On behalf of the Rose Law Group, I am writing this letter in support of the Arizona Department of Water Resources' (ADWR) recent efforts, in conjunction with the Governor's office, to support new Assured Water Supply rules. Particularly, we believe the proposed ADAWS rules will significantly benefit the prospects of a sustainable water supply in the Pinal AMA going forward.

By permitting landowners to incorporate new non-groundwater sources into their overall water portfolio, ADAWS would allow landowners new methods to reach their water demands and even lessen the dependence on groundwater sources, paving the way for a more-sustainable water supply in Pinal County.

Under existing rules, landowners without a Certificate of Assured Water Supply but who could otherwise secure non-groundwater sources to meet demands are still unable to develop. ASAWS rules would ensure these landowners—who demonstrate ability to provide and protect water supply—may utilize their land to its fullest potential. Changes in land use and population require Pinal County to continue developing residential, commercial, and industrial infrastructure, and the flexibility afforded to landowners with ASAWS rules would help the County remain an attractive and economically diverse place for generations.

Once again, we appreciate and support the efforts of the Governor's office and ADWR staff, putting our full support behind the proposed ADAWS rules.

Sincerely,

Jordan R. Rose

Docusign Envelope ID: 4A00CA71-5BD5-45EA-9FF7-2CA2C5D94433

SUN STATE BUILDERS

To: Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 E. Washington Street
Suite 310
Pheonix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a business, it is important to have a vibrant economy that attracts more businesses and high-quality workers who can live and work in our communities.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

DocuSigned by:
Andrea Piering
8F6A9C89E0AE4BB...

Andrea Piering, President

Sun State Builders

Established September 1973
General Contractor • Construction Management • Development
1050 West Washington • Suite 214 • Tempe, Arizona 85288
Phone 480-894-1286 • Fax 480-968-4826
State of Arizona B-01 General Contractor License No. ROC072969

Pinal County Water Augmentation Authority

September 5, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Ste 310
Phoenix, AZ 85007

Dear Ms. Scantlebury:

The Pinal County Water Augmentation Authority would like to offer strong support for the proposed amendment to the Pinal AMA Assured Water Supply (AWS) Rules; specifically, the Alternative Path to Designation of a 100-year Assured Water Supply (ADAWS) provisions. The Authority believes that this will help to create a sustainable water supply for the Pinal AMA, and foster regulatory stability which are important to all aspects of our regional economy.

As Chairman of the Authority, I appreciate that the proposed rule change will require an offset to existing groundwater pumping with new, non-groundwater supplies as development occurs. This should provide for a more diversified water portfolio for the area, creating a more sustainable water supply for current residents and businesses. It should also help provide a path forward for new subdivision development that is not already covered by a Certificate of Assured Water Supply, where as under the current regulatory structure no such path practically exists.

I believe that stabilizing the regulatory environment can provide all sectors of our economy confidence that their homes, businesses, and land will continue to have value as we will have a sustainable water supply. Additionally, the new rules foster the co-existence of agricultural and municipal water demands, providing for a natural progression of subdivision development that is consistent with a market-driven economy.

I would like to add my thanks for all the efforts of ADWR staff and the Governor's Office in getting the policy discussion to this point and would encourage the adoption of the new rules as soon as possible.

Sincerely,

William E. Collings

William E. Collings, Chairman
Pinal County Water Augmentation Authority

Pinal County Water Augmentation Authority, P. O. Box 12684, Casa Grande, AZ 85130-2684
Phone: (520) 518-1726 Email: jsingleton@pcwaa-az.org
Web: www.pcwaa-az.org

Wilde & Malano, LLC
7549 N 20th St
Phoenix, AZ 85020

September 5, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Wilde & Malano LLC has owned land in the Pinal AMA since 2006 which it plans to develop. If these rules are not adopted, we will move forward with plans to develop that will not include subdividing, but nevertheless use groundwater. This groundwater will be unaccounted for.

We feel these rules changes will allow us to develop responsibly under Assured Water Supply rules and offset any groundwater we use, or allow our water provider to acquire other renewable supplies to meet our needs. This type of development will be of much greater economic value to Pinal County and will also benefit the aquifer by accounting for groundwater use, if any.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Mike Malano
Manager, Wilde & Malano LLC

Global Water Resources

September 6, 2024

Arizona Department of Water Resources
ATTN: Sharon Scantlebury, Docket Supervisor
1110 W. Washington St.
Suite 310
Phoenix, AZ 85007
Via Email: docketsupervisor@azwater.gov

RE: Comments pertaining to Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record on August 23, 2024

Dear Ms. Scantlebury,

Thank you for including the Pinal AMA in the above mentioned rulemaking for the Alternative path for a Designation of Assured Water Supply (ADAWS). We appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules.

We believe the ADAWS will help to allow economic growth to occur while simultaneously making water supply portfolios more sustainable. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

For many years now ADWR has not approved a new final determination of an assured water supply in the Pinal Active Management Area based on groundwater due to concerns of groundwater availability. The ADAWS will allow ADWR to issue new Designations of Assured Water Supply and subdivisions can move forward. The process also requires the use of new non-local groundwater which will increase sustainability in Pinal County.

I am grateful for all the hard work that went into this by ADWR's staff and the Governor's Office. While much more work needs to be done and it is important that Pinal AMA remains included in all water management discussions, this is a meaningful step forward for Pinal County.

Thank you,

Ron L. Fleming
President and Chief Executive Officer

Global Water Resources, Inc. - Corporate Headquarters
21410 North 19th Avenue, Suite 220
Phoenix, AZ 85027

Phone: 480-360-7775
Fax: 844-232-3517
www.gwresources.com

DAYBREAK PECAN CO.

September 9, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

As a Farmer in Pinal County, I would like to thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Ty LeSueur

General Partner, Daybreak Pecan Co.

4539 E. Philips Road, Eloy, AZ 85131 - (480) 320-9731

DESIGN BUILD MANAGE

DISCOVERY BUILDING COMPANIES INC.

RECEIVED

SEP 09 2024

LEGAL
DEPT OF WATER RESOURCES

September 5, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Morris Mennenga President

Discovery Building companies Inc.

56 N. Agua Fria Ln. • Casa Grande, AZ 85194-3841
Phone (520) 560-1010 • morrism1999@gmail.com
ROC 168762

El Dorado
Holdings, Inc.

September 9, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

On behalf of El Dorado Holdings, I would like to extend our sincere gratitude to the Governor's Office and the dedicated staff at the Arizona Department of Water Resources for their collaborative efforts in developing the Alternative Designation of Assured Water Supply rules. These innovative regulations represent a significant step toward ensuring a sustainable water supply in the Pinal AMA.

A reliable and sustainable water supply is crucial for the continued vitality and growth of Pinal County's economy. Through this letter, I express my wholehearted support for the new rules and urge their swift adoption.

Once again, thank you to the Governor's Office and Arizona Department of Water Resources staff for your commitment and hard work.

This initiative marks an important advancement for the entire Pinal County community.

Chris Grogan | President

El Dorado Holdings, Inc.

Gainey Ranch Town Center II
7600 E Doubletree Ranch Road, Ste. 300 | Scottsdale, AZ 85258 | (602) 955-2424 | FAX (602) 955-3543

HANCOCK
BUILDERS

September 9, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a business, it is important to have a vibrant economy that attracts more businesses and high quality workers who can live and work in our communities. Existing residents and businesses will benefit from this, because the ADAWS requires water providers to offset existing groundwater pumping with a new non-groundwater supply as new developments come online. This will result in further diversifying the water provider's water supply portfolio creating a more sustainable water supply for existing residents and businesses. A sustainable water supply is foundational to a strong economy that supports strong property values, businesses and our overall quality of life.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Greg Hancock, President
Hancock Builders

4040 E. Camelback Rd, Ste 215
Phoenix AZ, 85018
(480)-285-1300

LeSueur Investments

September 9, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

As a Landowner in Pinal County, I would like to thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Ty LeSueur

President of LeSueur Investments

3850 E. Baseline Road, Suite 114 Mesa, AZ 85206 – (480) 424-3400

SanTan Development Group, Inc.

September 9, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

As a Real Estate Developer in Pinal County, I would like to thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Ty LeSueur

President of SanTan Development Group, Inc.

3850 East Baseline Road, Suite 114 Mesa, AZ 85206 – (480) 424-3400

From the Desk of

Donna McBride
1440 E Douglas Street
Casa Grande, AZ 85122

September 10, 2024

To: Ms. Scantlebury

Fr: Donna McBride
Casa Grande City Councilwoman

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Please accept my appreciation for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for collaborating with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

In my 8 years as City Councilwoman, water has been a topic at the least of priorities. A sustainable water supply is particularly important to all aspects of our economy in Pinal County.

I am expressing my direct support for the new rules and encourage their adoption as soon as possible. This letter validates this support for your records.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are a crucial step forward for all of Pinal County, including the city of Casa Grande.

Respectfully submitted,

Donna McBride

Donna McBride
Casa Grande City Councilwoman
Donna_McBride@casagrandeaz.gov

LAUNCH
DEVELOPMENT FINANCE ADVISORS

4900 NORTH SCOTTSDALE ROAD
SUITE 3000
SCOTTSDALE, AZ 85251
TEL (855) 970-0003
www.launch-dfa.com

VIA ELECTRONIC DELIVERY

Sharon Scantlebury
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St.
Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Pamela Giss
Principal

ARCUS™

ARCUS™ | PRIVATE CAPITAL SOLUTIONS, LLC
4915 E BASELINE RD STE 105 GILBERT, AZ 85234
PHONE: 480.305.7070 FAX: 480.305.7090
WWW.ARCUSCAPITAL.COM

September 11, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to find water solutions in the Pinal AMA. We have been intricately involved as a stakeholder in the effort to find reasonable water solutions in that region since the initial efforts of ADWR to reassess water in Pinal AMA nearly a decade ago. We very much appreciate the current effort to develop these new Assured Water Supply rules in the form of ADAWS. We believe that will introduce a crucial path forward to create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy and quality of life in Pinal County. It is vital to find a balanced solution that protects our most precious natural resource, water, while also supporting reasonable affordability and thoughtful economic and housing development growth.

We are multi-generational Arizonans going back to 1878 with a deep heritage in farming, ranching, land development, home building, job creation, technology development, and overall economic development. We even have family who labored a century ago on the dam and reservoir infrastructure that is so foundational to our water and economy today. The ADAWS program is one of many initiatives our generation is taking on to secure innovative and sustainable life in Arizona for the future.

Again, thank you for the efforts of the Governor's Office and ADWR staff and the great work to find a way forward.

Sincerely,

Jason Barney
480-818-2000
jason@jasonbarney.com
www.jasonbarney.com

HANCOCK
BUILDERS

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Greg Hancock, President
Hancock Builders

4040 E. Camelback Rd, Ste 215
Phoenix AZ, 85018
(480)-285-1300

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Letter of Support for the ADAWS Rule Making

1 message

Amy Weidman <Aweidman@harvardinvestments.com> Wed, Sep 11, 2024 at 1:00 PM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>

Please find attached a letter of support from Harvard Investments for the ADAWS rule making.

Thanks.

Amy

HARVARD INVESTMENTS

Amy Weidman

Vice President of Development

M - (602) 478-0636

aweidman@harvardinvestments.com

17700 N Pacesetter Way, Suite 100

Scottsdale, AZ 85255

SKM_C45824091110550.pdf
54K

HARVARD INVESTMENTS
A HILL COMPANY

May 9, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

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As a landowner / developer within the Pinal AMA, these rules are important to allow for responsible development of land that otherwise would not be developable. The current rules provide no path forward for development. We believe that the ADAWS would create a sustainable water supply for the Pinal AMA that would attract and keep world class industry as well as housing and commercial development in areas where affordable growth is desperately needed.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Tim Brislin
President
Harvard Investments

17700 North Pacesetter Way, Suite 100 • Scottsdale, Arizona 85255 • 480.348.1118 • Fax 480.348.8976

351 N. Arizona Blvd., Suite 5
Coolidge, AZ 85128
(520) 723-3009
info@coolidgechamber.org
www.coolidgechamber.org

Sharon Scantlebury, Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St., Suite 310 Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

September 12, 2024

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

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Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Matt McCormick
President, Coolidge Chamber of Commerce

RECEIVED

SEP 12 2024

LEGAL
DEPT OF WATER RESOURCES

Copper Butte, LLC

September 4, 2024

Sharon Scantlebury
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

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Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Gary Smith
Manager
Copper Butte, LLC

5009 E Washington St #100 | Phoenix, AZ | 85034

DAYBREAK PECAN CO.

RECEIVED
SEP 12 2024
LEGAL
DEPT OF WATER RESOURCES

September 10, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

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As a part of the Agricultural economy, these rules are important to me because the new rules allow for agriculture and municipal demands to co-exist by providing a more natural progression of subdivision development consistent with market forces.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Brent A. Bowden
Managing Member

1223 S Clearview Avenue • Suite 105 • Mesa, Arizona 85209
Phone: (480) 222-5800 • Fax: (480) 222-5801

DAYBREAK PECAN CO.

RECEIVED

SEP 12 2024

LEGAL
DEPT OF WATER RESOURCES

September 10, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

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Sincerely,

Craig D. Cardon
Managing Member

1223 S Clearview Avenue • Suite 105 • Mesa, Arizona 85209
Phone: (480) 222-5800 • Fax: (480) 222-5801

DAYBREAK PECAN CO.

RECEIVED
SEP 12 2024
LEGAL
DEPT OF WATER RESOURCES

September 10, 2024

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Sincerely,

Elijah T. Cardon
Managing Member

1223 S Clearview Avenue • Suite 105 • Mesa, Arizona 85209
Phone: (480) 222-5800 • Fax: (480) 222-5801

DAYBREAK PECAN CO.

RECEIVED

SEP 12 2024

LEGAL
DEPT OF WATER RESOURCES

September 10, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

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Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Broc C. Hiatt
Managing Member

1223 S Clearview Avenue • Suite 105 • Mesa, Arizona 85209
Phone: (480) 222-5800 • Fax: (480) 222-5801

FAR MAREL, LLC

RECEIVED

SEP 12 2024

LEGAL
DEPT OF WATER RESOURCES

September 10, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

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As landowner without a Certificate of Assured Water Supply, these rules are important to me because the ADAWS protects and honors existing CAWS. The existing CAWS are not deleted, but rather placed in an inactive status. The ADAWS instead largely honors the "groundwater allowances" and "extinguishment credits" already pledged to existing CAWS by providing mechanisms for incorporating them into the ADAWS. Should the water provider be unable to maintain its Designation, the existing CAWS would be reactivated and provide the same level of land entitlement as without an ADAWS.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

BA Bowden

Brent A. Bowden
Manager

1223 S. Clearview Avenue, Suite #105 - Mesa, AZ 85209 - Phone: (480) 222.5800 - Fax: (480) 222.5801

FARM SOURCES INTERNATIONAL

September 12, 2024

Sharon Scantlebury
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

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As a part of the agricultural and industrial economy, these rules are important to me because the new rules allow for agriculture and municipal demands to co-exist by providing a more natural progression of subdivision development consistent with market forces.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Jackob Andersen
President & CEO
Farm Sources International Holdings, LLC

RECEIVED

SEP 12 2024

LEGAL
DEPT OF WATER RESOURCES

Franklin 643, LLC

September 4, 2024

Sharon Scantlebury
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

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Franklin acquired, in 2017, and currently owns a development project as part of the Anthem subdivision at Merrill Ranch. This property is located within that portion of what was Johnson Utilities, and now EPCOR's, Certificate of Convenience and Necessity located in Pinal County, AZ. The property is also located withing the Pinal Active Management Area and most importantly is "shovel ready."

Working with ADWR, the Town of Florence and EPCOR we have been unable to secure approval for water extension to our property for the past 7 years. We are hopeful that passage of these new rules will allow this project to move forward for the benefit of the Town and many who seek to live there.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

David Sabow
Manager
Franklin 643, LLC

RECEIVED

SEP 12 2024

LEGAL
DEPT OF WATER RESOURCES

Franklin 643, LLC

September 4, 2024

Sharon Scantlebury
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

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Sincerely,

Gary Smith
Manager
Franklin 643, LLC

5009 E Washington St #100 | Phoenix, Arizona | 85034

LAVIGNA INVESTMENTS CORPORATION

RECEIVED
SEP 12 2024
LEGAL
DEPT OF WATER RESOURCES

September 10, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

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Sincerely,

Brent A. Bowden
Vice President

1223 S. CLEARVIEW AVENUE, SUITE #105 - MESA, AZ 85209 - PHONE: (480) 222.5800 - FAX: (480) 222.5801

LAVIGNA INVESTMENTS CORPORATION

RECEIVED
SEP 12 2024
LEGAL
DEPT OF WATER RESOURCES

September 10, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

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Sincerely,

Elijah T. Cardon
Secretary

1223 S. CLEARVIEW AVENUE, SUITE #105 - MESA, AZ 85209 - PHONE: (480) 222.5800 - FAX: (480) 222.5801

LAVIGNA INVESTMENTS CORPORATION

RECEIVED

SEP 12

LEGAL
DEPT OF WATER RESOURCES

September 10, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

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Sincerely,

Craig D. Cardon
Treasurer

1223 S. CLEARVIEW AVENUE, SUITE #105 - MESA, AZ 85209 - PHONE: (480) 222.5800 - FAX: (480) 222.5801

LAVIGNA INVESTMENTS CORPORATION

RECEIVED

SEP 12 2024

LEGAL
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September 10, 2024

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Sincerely,

Broc C. Hiatt
President

1223 S. CLEARVIEW AVENUE, SUITE #105 - MESA, AZ 85209 - PHONE: (480) 222.5800 - FAX: (480) 222.5801

MT. OLYMPUS INVESTMENTS, L.L.C.

RECEIVED
SEP 12 2024
LEGAL
DEPT OF WATER RESOURCES

September 10, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

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Sincerely,

Craig D. Cardon
Manager

1223 SOUTH CLEARVIEW AVENUE, SUITE 103 - MESA, ARIZONA 85209 - PHONE: (480) 222.5800 - FAX: (480) 222.5801

Leo Lew
County Manager

PINAL COUNTY
WIDE OPEN OPPORTUNITY

Himanshu Patel
Deputy County Manager

Mary Ellen Sheppard
Deputy County Manager

Cathryn Whalen
Deputy County Manager

September 12, 2024

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

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Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Leo Lew
County Manager

Pinal Land Holdings

September 12, 2024

Sharon Scantlebury
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury,

Pinal Land Holdings is a leading developer in Arizona with projects throughout the state including Inland Port Arizona ("IPAZ") and numerous utlity scale solar sites. IPAZ is home to Nikola Motor Company and Procter & Gamble and we are actively working with the Arizona Commerce Authority to attract additional manufactures to the region. These companies evaluate several factors when selecting a site and one of the top factors that has lead to so much success at IPAZ has been available and affordable housing in the region.

As President/CEO of a company that is on the forefront of some of the state's largest economic development wins, I am writing to thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. These rules will support affordable homes and economic success for our state while continuing to protect consumers and the underground aquifers.

Arizona has a history of forward thinking water regulation and we appreciate the efforts of the Governor's Office and ADWR staff on these important steps forward for all of Pinal County.

Sincerely,

Jackob Andersen
President & CEO
Pinal Land Holdings, LLC

Saint Holdings, LLC

September 12, 2024

Sharon Scantlebury
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury,

Saint Holdings is a leading developer in Arizona with projects such as Central Arizona Commerce Park ("CAZCP") in Casa Grande. CAZCP is home to many companies including Lucid Motors, Tractor Supply Company and several supply chain companies for the semiconducter industry that employ thousands of area residents. These companies evaluate several factors when selecting a site and one of the top factors that has lead to so much success at CAZCP has been available and affordable housing in the region.

As President/CEO of a company that is on the forefront of some of the state's largest economic development wins, I am writing to thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. These rules will support affordable homes and economic success for our state while continuing to protect consumers and the underground aquifers.

Arizona has a history of forward thinking water regulation and we appreciate the efforts of the Governor's Office and ADWR staff on these important steps forward for all of Pinal County.

Sincerely,

Jackob Andersen
President & CEO
Saint Holdings, LLC

RECEIVED

SEP 12 2024

LEGAL
DEPT OF WATER RESOURCES

September 4, 2024

Sharon Scantlebury
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: **Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record**

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As a landowner with land in Queen Valley, AZ, (at Silver King & Williams Roads) the ADAWS protects and honors existing CAWS. The existing CAWS are not deleted, but rather placed in an inactive status. The ADAWS instead largely honors the "groundwater allowances" and "extinguishment credits" already pledged to existing CAWS by providing mechanisms for incorporating them into the ADAWS. Should the water provider be unable to maintain its Designation, the existing CAWS would be reactivated and provide the same level of land entitlement as without an ADAWS.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Gary Smith
Manager
Silver King 160, LLC

5009 E Washington St #100 | Phoenix, Arizona | 85034

TOWN OF SUPERIOR

Town Hall • 199 N. Lobb Ave., PO Box 218 • Superior, Arizona 85173
520-689-5752 • Fax: 520-689-5822 • TDD Relay 1-800-367-8938

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

September 12, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal and Phoenix AMAs. As you are aware, Pinal County is divided between the Phoenix and Pinal AMAs. While I understand the rules are different in the Pinal AMA than the Phoenix AMA for good reason, it is important that an assured water supply can be secured in Pinal County on both sides of the AMA boundary so we can make sure all Pinal County communities benefit from these positive changes.

A sustainable water supply is important to all aspects of Pinal County's economy. Through this letter, I am expressing my direct support for the new rules and encouraging their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are important steps forward for all of Pinal County.

Sincerely,

Mila Besich

Mayor Mila Besich
Town of Superior

VIEL GLUCK, LLC

RECEIVED
SEP 12 2024
LEGAL
DEPT OF WATER RESOURCES

September 10, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

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As landowner without a Certificate of Assured Water Supply, these rules are important to me because the ADAWS protects and honors existing CAWS. The existing CAWS are not deleted, but rather placed in an inactive status. The ADAWS instead largely honors the "groundwater allowances" and "extinguishment credits" already pledged to existing CAWS by providing mechanisms for incorporating them into the ADAWS. Should the water provider be unable to maintain its Designation, the existing CAWS would be reactivated and provide the same level of land entitlement as without an ADAWS.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Elijah T. Cardon
Managing Member

1223 S. CLEARVIEW AVENUE, SUITE #105 - MESA, AZ 85209 - PHONE: (480) 222.5800 - FAX: (480) 222.5801

BEN FATTO, LLC

September 10, 2024

RECEIVED
SEP 13 2024
LEGAL
DEPT OF WATER RESOURCES

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

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Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Broc C. Hiatt
Managing Member

1223 S. CLEARVIEW AVENUE, SUITE #103 - MESA, AZ 85209 - PHONE: (480) 222.5800 - FAX: (480) 222.5801

CASA GRANDE
Chamber of Commerce & Tourism Office

Building a greater Casa Grande

September 13, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

On behalf of the Casa Grande Chamber of Commerce and Tourism Office Board of Directors, I am writing to thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a business, it is important to have a vibrant economy that attracts more businesses and high-quality workers who can live and work in our communities. The ADAWS allows water providers who are currently not designated as having an Assured Water Supply to secure an Assured Water Supply. Existing residents and businesses will benefit from this, because the ADAWS requires water providers to offset existing groundwater pumping with a new non-groundwater supply as new developments come online. This will result in further diversifying the water provider's water supply portfolio creating a more sustainable water supply for existing residents and businesses. A sustainable water supply is foundational to a strong economy that supports strong property values, businesses and our overall quality of life.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Renée Louzon-Benn
Executive Director
Casa Grande Chamber of Commerce and Tourism Office

Unlocking the Value of Real Estate

September 13, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suit 310
Phoenix, AZ 85007

Dear Ms. Scantlebury:

RE: Keeping the American Dream Alive

Dear Ms. Scantlebury:

People have been moving to Arizona for decades to improve their station in life. Many started new businesses, employing workers and creating a society that makes us all proud.

Pinal County has been able to attract more than its fair share of vigorous, modern and sustainable businesses. One of the major reasons for the stampede to Pinal, is that business owners knew that their employees could easily achieve the American Dream of home ownership. Additionally, many Phoenix and Tucson residents have been priced out of their local market but were able to find value in Pinal.

New development of single-family housing has practically come to a standstill because the water supply has been turned off. In the short run, reducing the supply of homes will raise prices. In the long run it makes us look like poor civic managers and will discourage businesses from locating to Arizona.

Arizona has a long history of collaboration on water issues for the public benefit. It would be a shame if this legacy ended today.

Sincerely yours,

Rebecca Roberts
Commercial Sales and Leasing

14350 N 87th St, Suite 180, Scottsdale, Arizona 85260

Telephone 602-791-6262 rebecca@blumroberts.com

September 16, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a business, it is important to have a vibrant economy that attracts more businesses and high quality workers who can live and work in our communities. The Assured Water Supply Designation (ADAWS) offers a significant opportunity for our water providers to secure a more reliable and sustainable water supply. Currently, some water providers in our area do not have an Assured Water Supply, but with ADAWS, they will be required to offset their current groundwater pumping by sourcing new, non-groundwater supplies as new developments are built. This diversification of water sources will directly benefit both existing residents and businesses, ensuring a more sustainable and dependable water supply. A stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering the overall economic health and quality of life in our community.

As a landowner without a Certificate of Assured Water Supply, these rules are important to me because the new rules under ADAWS provide a practical path for developing new subdivisions on land not covered by a CAWS, which was not possible under the current rules. Previously, landholders needed to either secure non-groundwater supplies to offset all groundwater pumping within a water provider's service area or build an isolated water system to bring the supply to the new development. With ADAWS, landholders only need to secure a non-groundwater supply for their property, and the water provider can integrate it into the existing system. This approach saves costs and contributes to a more sustainable water supply for residents and businesses.

As a part of the industrial economy, these rules are important to me because in addition to the benefits of a sustainable water supply for attracting and retaining world-class industries, ADAWS also

4492 W Kitty Hawk Chandler, AZ 85226
(602) 707-7222 | attesa.com

A driven COMMUNITY

supports the development of nearby housing needed to draw the skilled workforce required for the jobs and careers these industries create.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Dan Erickson, Managing Member

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS

1 message

Vern Haugen <vhaugen@me.com> Mon, Sep 16, 2024 at 12:16 PM
To: docketsupervisor@azwater.gov
Cc: Motor Vault Fountain Hills Info <vhaugen@me.com>

Vern Haugen

Casa Grande Holding LLC

21001 N Tatum Blvd. ste 1630-475

Phoenix, AZ 85050

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

I have 480 acres PAD Mira Vista located in Pinal County that needs the water!

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Thank you, Vern

Vern Haugen
Casa Grande Holding Company LLC
vhaugen@me.com
(480)-216-7577
21001 N Tatum Blvd.
Suite 1630-475
Phoenix, AZ 85050

September 16, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

On behalf of Lucid Motors, thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS. As the largest employer in Pinal County, sustainable growth is imperative as we continue to expand our operations and footprint in Casa Grande, AZ. We believe Arizona Water Company is well suited to provide the best support as an "Alternative Path to Designation of a 100-year Assured Water Supply" (ADAWS) provider to ensure a sustainable water supply in the Pinal AMA that meets the regional administrative and water needs for all users.

Through this letter, I am expressing our direct support for the new rules and encourage their adoption as soon as possible. Currently, we employ over 2000+ full-time Lucid team members and are growing. Through this growth, we will require additional water utilization to support our expanding operations, future supplier business needs, and employee housing. Our experience with Arizona Water Company has been superb and they have been a reliable utility partner since the beginning. By granting Arizona Water Company the authority to serve as an ADAWS provider, you will help us meet these future needs in a prompt manner by local response through a water utility company that we have a relationship with and who knows our business.

We appreciate your time and consideration. The future of Arizona's economic development and business success relies on sustainable and local water management policy. This initiative is a step in the right direction for all water users in the Pinal AMA. Once again, we thank you and appreciate the efforts of the Governor's Office and ADWR staff.

Sincerely,

Michael Cruz, MBA
Sr. Manager, State Public Policy
Lucid Motors
michaelcruz@lucidmotors.com
(602) 599-3206

Jeff Mirasola
Lumen Government Affairs
2120 N. Central Ave.
Phoenix, AZ 85004

September 16, 2024

Sharon Scantlebury, Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St., Suite 310 Phoenix, AZ 85007
(602) 771-8472
Fax: (602) 771-8686
docketsupervisor@azwater.gov

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Jeffrey McClure
Supervisor, District 4

PINAL COUNTY
WIDE OPEN OPPORTUNITY

September 16, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

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Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Jeffrey McClure
Pinal County Board of Supervisors

Board of Supervisors

135 North Pinal Street | Florence, AZ 85132 | T (520) 866-6054 | E Jeffrey.McClure@pinal.gov | www.pinal.gov

BUCKEYE, AZ
CITY MANAGER'S OFFICE

September 17, 2024

Ms. Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, Arizona 85007

Re: Alternative Designation of Assured Water Supply Rules

Dear Ms. Scantlebury:

The City of Buckeye's goal is to obtain an Assured Water Supply designation, enabling us to directly manage our water resources. The Arizona Department of Water Resources (ADWR) Alternative Designation of Assured Water Supply (ADAWS) program offers a potential pathway for Buckeye to achieve this designation while providing a necessary transition period to acquire new renewable resources and reduce reliance on groundwater supplies. While we value the efforts of ADWR and the Governor's Office in developing ADAWS, we have reservations regarding the near-term viability of the program for our community.

As Buckeye has expressed on multiple occasions, we are particularly concerned about the fairness of the financial impacts of R12-15-710(H.2). This rule mandates a 25 percent groundwater offset for each new alternative water supply included in the designation, which places a significant cost burden on the city and our ratepayers. The intended benefits of this rule can be achieved with a lower offset percentage, allowing more flexibility to transition to renewable sources. Furthermore, as noted during the informal rules process, the 25 percent offset also applies to effluent generated from new alternative water supplies. Because this water would effectively be subject to the rule multiple times, the actual offset would far exceed 25 percent. This compounding effect would further increase the financial burden on Buckeye's water ratepayers, one that residents in other cities do not bear.

We must also emphasize that the cost burdens of reducing groundwater pumping and addressing unmet demand in the Phoenix Active Management Area (AMA) should not be placed solely on ADAWS providers. The groundwater deficit impacts the entire Phoenix AMA, and the ADAWS rules should be revised to ensure the offset requirement is applied equitably across all currently designated water providers and not just potential ADAWS applicants.

The financial impacts of these rules could potentially be mitigated through additional regulatory or legislative changes. We commend the Legislature, the Governor's Office, Central Arizona Project, and ADWR for their efforts on SB1181, which provides greater flexibility for providers to collaborate with the Central Arizona Groundwater Replenishment District (CAGRD) on the service area agreement required by R12-15-710(K). This is a crucial step in enhancing the feasibility of ADAWS. However, more work remains to be done, and Buckeye cannot move forward with ADAWS until there is a solution to the agricultural-to-urban land conversion proposal negotiated during the legislative session. Converting water-intensive agricultural land to residential use is crucial for Buckeye's future growth, as it will provide the necessary resources and certainty for the success of the

530 EAST MONROE AVENUE | BUCKEYE, ARIZONA | 85326
623.349.6991 | DCOTTERMAN@BUCKEYEAZ.GOV | BUCKEYEAZ.GOV

ADAWS program. This conversion will also yield significant long-term benefits for the aquifer, potentially saving over 100,000 acre-feet of water annually in the Buckeye area. We recommend amending R12-15-710(J) to allow groundwater volume resulting from the agricultural-to-urban conversion program to be added to the ADAWS. This change would provide an additional and crucial source of water for meeting our assured supply requirements while also conserving significant amounts of groundwater.

Infrastructure requirements also represent a significant barrier for Buckeye's participation in ADAWS. The city's planning area covers 640 square miles, encompassing multiple separate water service areas, each with distinct needs and available resources. These systems are not interconnected, and current regulations prevent us from pursuing an ADAWS designation for the entire city without significant infrastructure investment. This investment, which involves connecting the systems, is not part of the city's current five-year capital improvement plan. As a result, Buckeye may need to pursue separate ADAWS designations for each service area, leaving some regions in a state of uncertainty until connections are established and new alternative supplies are secured. A short-term solution to this issue is crucial.

Finally, the City of Buckeye has concerns about the timeframes associated with ADWR's review and processing of ADAWS applications. As mentioned in the Economic Impact Statement, the ADAWS application process demands *substantial* staff time, expertise, and legal review. Using our experience with ADWR and the Harquahala transportation order process (a process that is objectively less comprehensive than the anticipated ADAWS process) as an example, the ADAWS process could extend over several years, underscoring the need for interim solutions and alternative options for ADAWS participants during the application review period.

Continued collaboration will be required to develop and implement a variety of innovative water policies that account for the unique challenges facing Buckeye. While ADAWS may be one aspect of our long-term water strategy, it is only part of the solution. New water resources, conservation efforts, substantial investments in infrastructure, and policy refinements will all be necessary to ensure sustainable growth in the years and decades to come. We respectfully request that ADWR and the Governor's Office consider revising the ADAWS rules and lifting the current moratorium, allowing us the time and flexibility to work on these solutions while permitting sustainable housing development to resume.

As one of the fastest-growing cities in the nation, Buckeye is essential to meeting the region's affordable housing demands. We cannot afford to remain in a state of uncertainty. Implementing innovative water resource solutions is essential—not just for our city, but for the economic health and growth of the entire region and state. We appreciate the efforts of ADWR and the Governor's Office and remain committed to working with all stakeholders to establish fair and equitable means to secure a resilient water future that supports growth, manages water resources effectively, and ensures long-term sustainability for all of Arizona.

Thank you for your consideration. Please let us know if we can provide any additional information.

Sincerely,

Dan Cotterman
Buckeye City Manager

RECEIVED

SEP 17 2024

LEGAL
DEPT OF WATER RESOURCES

Franklin 643, LLC

September 4, 2024

Sharon Scantlebury
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: **Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record**

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a landowner with land in Florence, AZ, (at Anthem @ Merrill Ranch) the ADAWS protects and honors existing CAWS. The existing CAWS are not deleted, but rather placed in an inactive status. The ADAWS instead largely honors the "groundwater allowances" and "extinguishment credits" already pledged to existing CAWS by providing mechanisms for incorporating them into the ADAWS. Should the water provider be unable to maintain its Designation, the existing CAWS would be reactivated and provide the same level of land entitlement as without an ADAWS.

Franklin acquired, in 2017, and currently owns a development project as part of the Anthem subdivision at Merrill Ranch. This property is located within that portion of what was Johnson Utilities, and now EPCOR's, Certificate of Convenience and Necessity located in Pinal County, AZ. The property is also located withing the Pinal Active Management Area and most importantly is "shovel ready."

Working with ADWR, the Town of Florence and EPCOR we have been unable to secure approval for water extension to our property for the past 7 years. We are hopeful that passage of these new rules will allow this project to move forward for the benefit of the Town and many who seek to live there.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Kevin Seabolt
Manager
Franklin 643, LLC

5009 E Washington St #100 | Phoenix, Arizona | 85034

Gail Robertson
Lonesome Valley Farms
1800 W. Highway 287
Casa Grande, AZ 85194

September 17, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

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As a part of the agricultural economy, these rules are important to me because they provide me with the freedom to transition my land from agricultural to urban use when it is the right time for me and my family. These rules will provide a more natural progression from agriculture to municipal consistent with market forces.

A sustainable water supply is very important to all aspects of our economy in Pinal County. The ADAWS will help give all sectors of the economy confidence that their homes, businesses, industries and land will continue to be valuable because we will have a truly sustainable water supply. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Gail Robertson

Gail Robertson

Jacob P. Roberts
Lonesome Valley Farms, DBA Terra Firma
1800 W. Highway 287
Casa Grande, AZ 85194

September 17, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

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Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Jacob P. Roberts

RANKIN
REAL ESTATE

Support for the Proposed ADAWS and Commingling Rules

RECEIVED
SEP 17 2024
LEGAL
DEPT OF WATER RESOURCES

Dear Ms. Scantlebury,

I am writing to express my profound gratitude for the diligent efforts undertaken by the Governor's Office and the Arizona Department of Water Resources (ADWR) in formulating the new Assured Water Supply regulations. The introduction of the ADAWS is a commendable initiative that promises to secure a resilient water supply for the Pinal Active Management Area (AMA), which is of paramount importance.

The economic vitality of Pinal County is inextricably linked to the availability of a reliable water supply. It is with this understanding that I convey my unequivocal support for the proposed rules. Their timely implementation is crucial, and I urge for their swift adoption.

I would like to reiterate my appreciation for the commitment shown by both the Governor's Office and the ADWR team. This progressive move is a significant milestone in ensuring the long-term sustainability of our county's water resources.

Yours sincerely,

RANKIN REAL ESTATE LLC
KERNIT@RANKINRE.COM (602) 448-6029

TOWN OF QUEEN CREEK ARIZONA

DELIVERED VIA E-MAIL (docketsupervisor@azwater.gov)

September 17, 2024

Ms. Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007

Dear Ms. Scantlebury:

Re: Alternative Designation of Assured Water Supply Rules

The Town of Queen Creek is a rapidly growing community in the Southeastern portion of the Phoenix Active Management Area (AMA) which currently services approximately 43,000 meters and 135,000 people both in and outside the Town limits. For over a decade, the Town has been working towards acquiring additional water resources in order to reduce our groundwater dependence, save taxpayer funds and ultimately work towards a designation status. Prior to the introduction of the Alternative Designation of Assured Water Supply (ADAWS) rules, the traditional designation process would have been extremely difficult for municipal providers, like the Town, to take advantage of due to the groundwater allowance calculations and the handling of non-replenished (legacy) groundwater use within the service area. Furthermore, the Phoenix AMA Groundwater model released by the Arizona Department of Water Resources (ADWR) in 2023 halted all new assured water supply determinations involving any component of groundwater, based on a 4% deficit in the groundwater basin over the next 100 years. For these reasons and others, the Town would like to commend the Governor's Office and ADWR for pursuing the ADAWS concept as a potential pathway forward for providers such as Queen Creek.

The proposed ADAWS rules make great strides in addressing the prior inhibitors, however; we do want to comment on some additional opportunities for further improvement that would assist municipal providers, like the Town, to ultimately pursue a form of designation. The entities that are most likely to apply under the ADAWS rules are younger municipalities or private utilities who received little to no Central Arizona Project (CAP) water, have little to no alternative surface water supplies, and have so far developed largely on groundwater. Many of the surface water supplies available in Arizona were previously divvied up among the more established communities. In Queen Creek's case, the Town has no Salt River Project (SRP) supplies and a CAP Municipal and Industrial (M&I) allocation of only 495-acre feet per year, which is only about 2% of its total water demand. Whereas, many of the currently designated cities received CAP/SRP supplies that were 80 to 100% of their buildout demand. Additionally, many of the water providers whom are designated now, have large amounts of non-groundwater supplies; including, SRP, CAP and tribal settlement water acquired at significantly reduced costs compared to the current market.

The Town has implemented strategies to move away from groundwater for the benefit of the aquifer as well as from the increasing rates of Central Arizona Groundwater Replenishment District (CAGRD) water. As the Department is aware, we have been working to acquire new water resources and invest in the necessary

infrastructure for their acquisition and implementation. With the limited supplies Arizona already faces, water is in high demand. The cost of acquiring new alternative supplies will only increase, and the competition for those supplies will grow exponentially as providers attempt to qualify for the ADAWS.

Prices are further exacerbated by the fact that the country has been experiencing unprecedented inflation, particularly in the construction fields. Significant infrastructure is necessary to develop, treat, and move these new resources. For example, the Town of Queen Creek had received a price estimate of $14.5 Million for a 5-mile pipeline project back in 2021, that same project is now being quoted for $36 Million.

Becoming an alternatively designated provider also requires the provider to become a Member Service Area of the CAGRD, which means that the provider will immediately incur the cost of replenishment at approximately $800/acre foot for any groundwater we use outside of existing Member Lands in addition to the existing legacy groundwater users. This means that the Town will not only have to expend considerable funds to purchase our own water supplies to offset groundwater, but we will be required to pay CAGRD replenishment costs at the same time. The complexities of the financing for these cumulative costs needs to be taken into consideration. Our Town Council will be faced with difficult choices in approving and allocating these costs across the diverse economic sectors of our service territory. In addition to the statutory requirements under A.R.S. 41-1052 D. 3, the high cost of acquiring water resources for ADAWS applicants makes it critical that the Department select the regulatory alternative that imposes the least burden and cost on providers attempting to become designated.

Consistent with our prior communications to ADWR, we have further elaborated on our financial and other concerns in the hope of continuing to work collaboratively with the Department as the rulemaking proceeds.

<u>25% Groundwater Offset</u>

According to the ADAWS draft rules, applicants are required to provide 25% of the new alternative water supply in the designation to be used to offset current groundwater use. Within the rules, ADWR has not provided data suggesting why a 25% offset alternative poses the least burden and cost to the regulated community. In fact, the Department's Phoenix AMA model shows a 4% deficit in all sectors of groundwater use, including agriculture and exempt wells. Meanwhile, the 25% offset seems to recognize that the new ADAWS providers are being required to make up for groundwater use by others, including currently designated providers. A reduced offset level closer to the identified 4% deficit would be a less burdensome and costly option.

Additionally, the 25% offset does not end until all groundwater volumes under the ADAWS are eliminated and the alternatively designated provider is completely transitioned off of groundwater. In fact, the rules do not explicitly address what will happen if the provider is completely transitioned off groundwater but continues to acquire new alternative supplies.

Furthermore, in the grandfathered groundwater calculation of the draft rules, it combines current groundwater use with groundwater demand associated with unbuilt certificates. This scenario creates a large portion of the grandfathered groundwater volume based on groundwater supplies that have been certificated and proven to be available for 100 years under the assured water supply process.

<u>We respectfully request the rules be amended, as appropriate, to limit the 25% offset to no more than the unreplenished groundwater use within the ADAWS provider's service area at the time on which the ADAWS is based (presumably 2023). Otherwise, the Town would be forced to lose a portion of</u>

an already proven assured water supply. Furthermore, ADWR should also identify a maximum percentage and have the flexibility to adjust this rate based on the current status of the deficit and/or up until the point when the provider can fully replenish their groundwater needs.

Effluent

The Town of Queen Creek believes the 25% offset required for all new alternative supplies should not be applied to any new effluent, or at a minimum, be reduced due to water and infrastructure costs (this adds approximately $40 Million in treatment costs/1,000-acre feet of water). Effluent is considered a recycled water supply and will be generated from the non-groundwater supplies brought in for new growth. Requiring an offset on effluent would inherently apply a double assessment on the same supply of water. In the groundwater management plans there are incentives in place for facilities or entities to use effluent instead of other supplies. For example, in the Phoenix AMA Industrial Conservation Program for turf related facilities, effluent use is counted as 0.6 acre feet/1 acre foot of use against the calculated allotment for the facility. Treating the effluent like other supplies of water in the ADAWS draft rules does not align with ADWR's current practices for effluent use and does not pose the least burden or costs to ADAWS applicants.

If every new block of effluent pledged to the designation requires a 25% offset, there will need to be a "true-up" process after every modification. Since effluent that is pledged to a designation is typically based on current production plus estimated future generation, there could be misalignment on what is actually produced (versus estimated) after the designation period. Therefore, if production is less than what was estimated, the effluent would have given more for the 25% offset than what the effluent supplies actually produce. In that scenario, if the provider decides to pledge more effluent to the designation, they will pay double for the offset when the effluent production is recalculated unless there is a reconciliation. The draft rules do not seem to perceive, or address, this problem.

Minimum CAGRD Reporting Requirement

The Town appreciates that ADWR has included in the draft ADAWS rules a new calculation for groundwater allowance to help reduce the costs of the inherit replenishment fees associated with any groundwater use. A groundwater allowance of 426,000 acre feet for Queen Creek's designation is helpful and necessary for the designation process to work; however, it is important to mention that under the current standard of CAGRD enrollment, there is a minimum reporting requirement of 2/3 of groundwater use.

Under these requirements if a water provider uses 1,000 acre feet of groundwater they could only apply 333 acre feet of groundwater allowance or other credits to offset their replenishment costs. This would only save $264,000 out of the $800,000 it costs to replenish the 1,000 acre feet of groundwater.

This immediate cost of replenishment occurs, of course, at the same time the proposed designated provider is actively attempting to acquire alternative non-groundwater supplies, at significant expense, to reduce the use of groundwater within the service area. The double financial impact of replenishment costs for groundwater use that is not required to be replenished under existing law, together with the cost of acquiring new alternative supplies and the infrastructure necessary to use those supplies, may place the alternative designation concept outside the financial ability of the Town.

Therefore, it is imperative that CAGRD and the providers applying for a designation under the ADAWS rules work together to determine a minimum reporting requirement that the provider can afford while insuring CAGRD can acquire enough funds for operations and resource acquisition. If these terms cannot be agreed upon by both parties, the ADAWS may not be a viable option for the water provider.

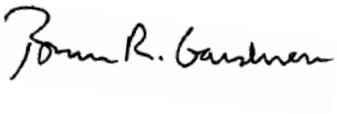
Agriculture to Urban Conversion Incentive

During the 2024 Legislative Session, the Arizona Legislature passed Senate Bill 1172, otherwise known as the Ag-to-Urban bill, but it was ultimately vetoed by the Governor. The passage of this legislation and/or a subsequent rulemaking by ADWR to accomplish the same, is the most significant incentive for the Town in formally pursing the path outlined in the proposed ADAWS rules. The Town has a long history of agricultural roots and many acres of farmlands still remain. An incentive needs to be established in order for the conversion of agricultural acres to urban development, which currently hold unreplenished grandfathered groundwater rights. Beginning in 2025, land owners can no longer relinquish their irrigation rights for extinguishment credits. By next year, the State will lose this remaining incentive of converting agriculture lands to development and reducing the overall use of groundwater.

As we move forward, the State needs to find a workable solution to fill that void and with limited physical availability and access issues for water, the Ag-to-Urban concept is a necessary solution. ADWR's own analysis shows there could be as much as an 11-million-acre feet reduction in groundwater use over the next 100 years in the Phoenix AMA if the agriculture to urban program was implemented. The Ag-to-Urban concept is one of the most cost effective ways for the Town to continue to acquire new supplies for a designation.

In conclusion, the Town of Queen Creek would like to thank ADWR and the Governor's Office for their work on the creation of the draft ADAWS rules. We appreciate the opportunity to provide commentary on the rules themselves as well as other implications. These rules, combined with the opportunity for an agricultural to urban conversion program in the Phoenix AMA, have the potential to lay the foundation for a much needed revision to the designation process while protecting our groundwater resources. The Town looks forward to future collaboration and further development of the rules to find constructive solutions for the aquifer and for all interested parties.

Sincerely,



Bruce R. Gardner
Town Manager

CASA 140, LLC
3131 East Camelback Road, Suite 310
Phoenix, Arizona 85016
(602) 279-3999 • Fax (602) 230-8065

September 18, 2024

Via Email docketsupervisor@azwater.gov

Ms. Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington Street, Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to the Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record.

Dear Ms. Scantlebury:

As a landowner holding an existing CAWS, we want to extend our thanks for the efforts of the Governor's Office and all staff at the Arizona Department of Water Resources ("ADWR") for working with the various interested parties to develop the new Assured Water Supply rules more particularly the ("ADAWS"), which will most certainly assist to create a sustainable water supply in the Pinal AMA.

To allow landowner's existing CAWS to be incorporated into the ADAWS will provide us the opportunity along with others (residents, businesses, etc.) to incorporate new non-groundwater supply methods thus reducing the reliance on groundwater. We appreciate that the ADAWS will protect and honor existing CAWS and that if landowner is unable to maintain its Designation, the existing CAWS will be reactivated and provided the same level of land entitlement as without an ADAWS.

We support the adoption of the new ADAWS for the economic benefit to Pinal County and its communities as soon as possible.

Again, thank you to the Governor's Office and ADWR for all its efforts and your forward vision to a long-term resolution for a sustainable water supply.

Sincerely,

Tom Tait
Landowner

k

CITY OF CASA GRANDE | STRONGER UNITED
510 E. Florence Blvd., Casa Grande, Arizona 85122
(520) 421-8600 | www.CasaGrandeAZ.gov

September 18, 2024

Ms. Sharon Scantlebury
Docket Supervisor, Arizona Department of Water Resources
1110 W. Washington Street, Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

As the City Manager of the City of Casa Grande, I want to thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. The City of Casa Grande, along with other municipal and private water providers, have been working collectively to find realistic solutions that manage water sustainability and growth within the Pinal AMA for close to a decade. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

I believe you will find that governmental entities, private developers, and residents within Pinal County agree that this proposed solution is a feasible resolve to our current and future management and oversight of this precious resource. It also provides a path for growth and development for our community, Pinal County, and the State of Arizona. The ADAWS allows water providers who are currently not designated as having an Assured Water Supply a path to secure the appropriate water supplies to ensure sustainability of the aquifer concurrently with managing the economic development and growth of a community. Existing residents and businesses will benefit from this because the ADAWS requires water providers to offset existing groundwater pumping with a new non-groundwater supply as new developments come online.

This balanced approach, along with the implementation of additional conservation measures and new innovative strategies is the correct proposition. I appreciate the efforts of everyone involved. This is an important step forward.

Sincerely,

Larry D. Rains
City Manager

communities southwest

September 4, 2024

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SEP 18 2024
LEGAL
DEPT OF WATER RESOURCES

Sharon Scantlebury
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St.
Suite 310
Phoenix, AZ 85007

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As landowner without a Certificate of Assured Water Supply, these rules are important to me because they provide a path for new subdivision development on lands not already covered by a CAWS. Under the current rules, there is no practical path forward. We would either need to secure a non-groundwater supply and offset all groundwater pumping inside a water provider's service area in addition to securing water for the new development, or alternatively, we would need to secure a non-groundwater supply to offset the demands of the new development and in addition build an isolated water system that would bring the new supply physically to the proposed subdivision, not touch the existing water system. Under the ADAWS, the landholder only needs to secure a non-groundwater supply for its property, and the water provider can introduce the water supply into the existing water system avoiding costs associated with building an isolated system. This will not only save the landholder money, but it will create a more sustainable water supply for all residents and businesses.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Mike Kern
President
Communities Southwest

7001 N. Scottsdale Road | Suite 1015 | Scottsdale, AZ 85253 | p 480.315.2600 | f 480.315.2699

September 4, 2024

RECEIVED
SEP 18 2024
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Sharon Scantlebury
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St.
Suite 310
Phoenix, AZ 85007

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Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Greg Lehmann
Executive Vice President
Communities Southwest

September 4, 2024

RECEIVED
SEP 18 2024
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DEPT OF WATER RESOURCES

Sharon Scantlebury
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St.
Suite 310
Phoenix, AZ 85007

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Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Michael Markakis
Vice President
Communities Southwest

communities southwest

September 4, 2024

RECEIVED

SEP 18 2024

LEGAL
DEPT OF WATER RESOURCES

Sharon Scantlebury
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St.
Suite 310
Phoenix, AZ 85007

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Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Luka Vignjevic
Chief Financial Officer
Communities Southwest

September 4, 2024

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SEP 18 2024
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DEPT OF WATER RESOURCES

Sharon Scantlebury
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St.
Suite 310
Phoenix, AZ 85007

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As landowner without a Certificate of Assured Water Supply, these rules are important to me because they provide a path for new subdivision development on lands not already covered by a CAWS. Under the current rules, there is no practical path forward. We would either need to secure a non-groundwater supply and offset all groundwater pumping inside a water provider's service area in addition to securing water for the new development, or alternatively, we would need to secure a non-groundwater supply to offset the demands of the new development and in addition build an isolated water system that would bring the new supply physically to the proposed subdivision, not touch the existing water system. Under the ADAWS, the landholder only needs to secure a non-groundwater supply for its property, and the water provider can introduce the water supply into the existing water system avoiding costs associated with building an isolated system. This will not only save the landholder money, but it will create a more sustainable water supply for all residents and businesses.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

M. Yerger

Michelle Yerger
Vice President
Communities Southwest

dream·mark

Dream Mark Home Communities:
Resort Life Styled Entry-Level Homes

September 18th, 2024

Dear Ms. Scantlebury:

RE: American Resort Communities development
of a Boardwalk Entry Level Resort Home Community
and the new ADAWS Rules

As we contemplate the development of America's first truly attainable entry level home community in Casa Grande, AZ, we would like to express our appreciation of your efforts of your ADWR team with the Governor's Office in working for the many stakeholders like us who have been trying to develop this groundbreaking home concept in Casa Grande in Pinal County for two years. The new Assured Water Supply (ADAWS) rules will create a sustainable water supply in the Pinal PMA and release the concern of us trying to judge when to time our zoning with the legislation on CAWS which have been like aligning the stars.

Water is important to all of all of us as residents, commercial business owners, farmers, developers, governments and all who make Pinal County home.

Please continue the good work and accept tour support for the new rules.

Sincerely,

Jim Mullin
CEO American Resort Communities

AMERICAN RESORT COMMUNITIES

American Resort Communities 6910 East Fifth Avenue, Suite 1000,
Scottsdale Arizona United States 85251 480.443.9400

September 18, 2024

Sent via E-Mail

Sharon Scantlebury

Arizona Department of Water Resources

1110 West Washington Street, Suite 310

Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

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A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

P.O. Box 80770

Phoenix, Arizona 85060

(602) 989-9899

Sincerely,

ELOY 170 L.L.C.,

an Arizona limited liability company

Larry A. Fink, Manager of

SRS Advisors L.L.C.,

Its: Manager

P.O. Box 80770

Phoenix, Arizona 85060

(602) 989-9899

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

New Assured Water Supply Rules

1 message

Kathleen J Singh <newfie222@me.com> Wed, Sep 18, 2024 at 1:14 PM
To: docketsupervisor@azwater.gov

Dear Ms. Scantlebury,

Thank you for the attention and efforts of the Governor's Office and the Arizona Department of Water Resources staff, along with stakeholders to develop new Assured Water Supply rules, especially the ADAWS. As a Casa Grande and Eloy landowner, having a sustainable water supply with an affordable water bill is very important. As someone who owns farm land in Eloy, I am very concerned about having a sustainable water supply. The new rules answer my concerns by allowing municipal and agricultural water supply needs to both be met. I fully supportive new rules, ad hope that they will be enacted as soon as possible.

Sincerely,
Kathleen Singh

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

New Assured Water Supply Rules Addendum

1 message

Kathleen J Singh <newfie222@me.com> Wed, Sep 18, 2024 at 1:38 PM
To: docketsupervisor@azwater.gov

Dear Ms. Scantlebury,

My letter in support of the new Assured Water Supply rules was mistakenly sent before proof reading. The last sentence should read as follows, I fully support the new rules, and hope that they are enacted as soon as possible.

Thank you,
Kathleen Singh

September 18th, 2024

Dear Ms. Scantlebury:

RE: American Resort Communities development
of a NEON RANCH resort in Pinal County and the new ADAWS Rules

We appreciate the efforts of your ADWR team with the Governor's Office in working for the many stakeholders like us who have been trying to develop a resort in Pinal County for three years. The new Assured Water Supply (ADAWS) rules will create a sustainable water supply in the Pinal PMA and release the concern of debt and equity firms who are reluctant to invest with us on the resort if "the water story is not figured out". Some firms have redlined AZ for their continued growth on misinformation we have to realign each day.

Water is important to all of us and it directly impacts our economy more than any other concern. The lack of it stops any of us in our tracks. That is why we are in full support for the new rules and we want to see their adoption as soon as practical so we can move forward.

Please continue the good work and accept tour support for the new rules.

Sincerely,

Jim Mullin
CEO American Resort Communities

American Resort Communities 6910 East Fifth Avenue, Suite 1000,
Scottsdale Arizona United States 85251 480.443.9400

Sonoran Ranch Properties, LLC

9/18/24

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As landowner without a Certificate of Assured Water Supply, these rules are important to me because effectively, the new rules provide a path for new subdivision development on lands not already covered by a CAWS. Under the current rules, there is no practical path forward. A landholder would either need to secure a non-groundwater supply and offset all groundwater pumping inside a water provider's service area in addition to securing water for the new development, or alternatively, the landholder would need to secure a non-groundwater supply to offset the demands of the new development and in addition build an isolated water system that would bring the new supply physically to the proposed subdivision, not touch the existing water system. Under the ADAWS, the landholder only needs to secure a non-groundwater supply for its property, and the water provider can introduce the water supply into the existing water system avoiding costs associated with building an isolated system. This will not only save the landholder money, but it will create a more sustainable water supply for all residents and businesses.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Kirk Harr

Sonoran Ranch Partnership

17218 E Alta Loma Fountain Hills, AZ 85268

Sonoran Ranch Properties, LLC

9/18/24

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Kirk Harr

Sonoran Ranch Partnership

17218 E Alta Loma

Fountain Hills, AZ 85268

AREÁD

Ms. Sharon Scantlebury,
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County.

Through this letter, we are expressing our direct support for the new rules and encourage their adoption as soon as possible.

As a developer, it is important to have a vibrant economy that attracts more businesses and high quality workers who can live and work in our communities.

Once again, we appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Bijan Afkhami

Bijan Afkhami
VP of Operations & Legal Affairs

BLEVINS FARMS LLC

5685 S. TOPAZ PLACE CHANDLER, AZ 85249-MAILING

805 N. STANFIELD RD STANFIELD, AZ 85172-PHYSICAL

602-339-4564

9/19/24

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

I am a Pinal County Farmer and I believe a sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Thank You for taking the time to read my letter and I appreciate all the efforts of the Governor's Office and ADWR staff. This is an important step forward for all of Pinal County,

Sincerely,

Brian Blevins

September 19, 2024

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

Re: Comments on Draft Rules for Alternative Pathway to Designation

Business for Water Stewardship (BWS) supports developing rules for an Alternative Pathway to Designation (ADAWS) for undesignated water providers in the Phoenix Active Management Area (AMA), as well as a set of rules that would apply in the Pinal AMA. ADAWS is an opportunity to provide communities the tools and flexibility to take positive and sustainable actions to shore up water supply and reduce groundwater reliance. Further, it is BWS' view that this can be a tool for regulatory relief and a way to open access to other water solutions the State needs, without further compromising Arizona's groundwater.

Our organization is committed to building consensus among business interest to:

- Advance innovation in Arizona for conservation, recharge, direct potable reuse, flexible water leasing, and overall efficiency;
- Secure Arizona's groundwater across the entire State, which is fundamental to Arizona's water reputation;
- Advocate for long-term Colorado River water supply solutions;
- Ensure economic viability and ecological resilience across Arizona.

Business for Water Stewardship believes a carefully crafted ADAWS approach can help create a predictable and secure water supply for Arizona, and we appreciate the opportunity to provide comments on the proposed ADAWS rules. Please do not hesitate to contact me if you have any questions or would like to discuss further.

Sincerely,
Todd Reeve, CEO
Business for Water Stewardship
Bonneville Environmental Foundation

CENTRAL ARIZONA IRRIGATION AND DRAINAGE DISTRICT

231 SOUTH SUNSHINE BLVD.
ELOY, ARIZONA 85131
(520) 466-7336 or (602) 258-3756

DIRECTORS
TODD COOLEY
JOHN DONLEY
JONATHAN HOUSEHOLDER
NATHAN KILLIAN
BRIAN RHODES
DANIEL F. SHEDD
MARK T. SMITH
RONELLA WHITE
CLINTON WOFFORD

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CLINTON WOFFORD, Secretary
RON McEACHERN, General Manager, Ass't Sec.
DEREK McEACHERN, Deputy General Manager
DANIEL B. JONES, General Counsel
PAUL R. ORME, Legal Counsel

September 19, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Central Arizona Irrigation and Drainage District (CAIDD) thanks you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

CAIDD is an agricultural water provider consisting of more than 80,000 acres in Pinal County. These rules are important because they provide a means to orderly transition land from agricultural to urban use and decrease reliance on local groundwater supplies. As Pinal County continues to adapt to ongoing Colorado River shortages, transitioning agricultural land to less water intensive urban use is a crucial tool to help preserve our water supplies and will benefit agriculture and the overall Pinal County economy.

A sustainable water supply is very important to all Pinal County residents and industry. The ADAWS will help give all sectors of the economy confidence that their homes, businesses, industries and land will continue to thrive with a truly sustainable water supply. CAIDD supports the new rules and encourages their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Ron McEachern
General Manager
Central Arizona Irrigation and Drainage District

COOLEY FARMS

6859 E. Rembrandt Ave., Suite 125 Mesa, AZ 85212

September 19, 2024

Sharon Scantlebury
Docket Supervisor ADWR
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which I believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a Pinal County landowner who also farms, these new rules will allow my farms to naturally progress to residential subdivision development in the future, consistent with market forces.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Todd Cooley
Cooley Farms, LLC

GOMAN+YORK

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007

September 19, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a business, it is important to have a vibrant economy that attracts more businesses and high-quality workers who can live and work in our communities.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

John Hart
Goman+York Property Advisors

IRONLINE
PARTNERS

September 19, 2024

Arizona Dept of Water Resources
Attn: Sharon Scantlebury
1110 W. Washington St, Suite 310
Phoenix, Arizona 85007

Re: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, we are expressing our direct support for the new rules and encourage their adoption as soon as possible.

As a landowner without a Certificate of Assured Water Supply, these rules are important to us because they provide a long-awaited path forward. We are the owners of approximately 300 acres comprised of 923+ single-family residential lots with approved preliminary plats. Unfortunately, and for the better part of 7 years, we have been unable to move our development forward and deliver affordable residential lots within Pinal County due to current rules. Under the ADAWS, the landholder only needs to secure a non-groundwater supply for its property, and the water provider can introduce the water supply into the existing water system avoiding costs associated with building an isolated system. This will not only save the landholder money but provides a solution to a problem that has held us up for years, and will create a more sustainable water supply for all residents and businesses.

Once again, we appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Bob Karber
Ironline Partners-Walker Butte 300 LLC

IRONLINE
PARTNERS

September 19, 2024

Arizona Dept of Water Resources
Attn: Sharon Scantlebury
1110 W. Washington St, Suite 310
Phoenix, Arizona 85007

Re: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, we are expressing our direct support for the new rules and encourage their adoption as soon as possible.

As a landowner without a Certificate of Assured Water Supply, these rules are important to us because they provide a long-awaited path forward. We are the owners of approximately 150 acres comprised of 605 single-family residential lots with approved preliminary plats. Unfortunately, and for the better part of 7 years, we have been unable to move our development forward and deliver affordable residential lots within Pinal County due to current rules. Under the ADAWS, the landholder only needs to secure a non-groundwater supply for its property, and the water provider can introduce the water supply into the existing water system avoiding costs associated with building an isolated system. This will not only save the landholder money but provides a solution to a problem that has held us up for years, and will create a more sustainable water supply for all residents and businesses.

Once again, we appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Tim O'Neil
Ironline Partners-Hunt & Hooper, LLC

September 19, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury: Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a landowner without a Certificate of Assured Water Supply, these rules are important to me because my farms are located near three existing towns in Pinal County that will have growing demand for housing as the population of Arizona increases. We know that residential development uses significantly less water than farming, so adoption of the ADAWS has many benefits for the region and its water resources.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Brent Grizzle, CEO
(760) 685-0660

P.O. Box 9308 | Bakersfield, CA 93389
Phone (760) 685-0660 | Fax (866) 645-2218

ROSEMEAD PROPERTIES, INC.

September 19, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

Re: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources ("ADWR") for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a landowner, these rules are important to me because the new rules provide hope for new subdivision development on lands that do not already have a Certificate of Assured Water Supply. There is no practical path forward under the existing rules without, in addition to securing water for new development, also building an isolated water system to bring the new supply physically to the proposed subdivision without commingling into the existing water system. This will avoid costs associated with building an isolated system that would otherwise create a less secure water system for my land as well as existing AWC customers.

The ADAWS is good for all sectors of the economy because it gives us the confidence that our homes, businesses, industries and land will continue to be valuable because we will have a truly sustainable water supply.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Robert W. Nicholson
Chairman

11142 Garvey Avenue • P. O. Box 6010 • El Monte, California 91734 • (818) 448-6183
Please reply to: P. O. Box 29006 • Phoenix, AZ 85038-9006 • (602) 240-6860

San Tan Tillage Inc.

1363 E. Zion Way
Chandler, AZ 85249
(602) 576-3447

September 19, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a 400 acre landowner holding existing Certificates of Assured Water Supply, these rules are important to me because the ADAWS protects and honors existing CAWS. The existing CAWS are not deleted, but rather placed in an inactive status. The ADAWS instead largely honors the "groundwater allowances" and "extinguishment credits" already pledged to existing CAWS by providing mechanisms for incorporating them into the ADAWS. Should the water provider be unable to maintain its Designation, the existing CAWS would be reactivated and provide the same level of land entitlement as without an ADAWS.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Justin Hastings

Justin Hastings

San Tan Tillage, Inc.

President

September 20, 2024

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

Re: Comments on Rules for Alternative Pathway to Designation

Dear Director Buschatzke,

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

We are supportive of the rules for the Alternative Pathway to Designation (ADAWS) for undesignated water providers in the Phoenix and Pinal Active Management Areas (AMAs). These rules have the potential to reduce unmet demand in these AMAs, which would be beneficial for water management and the economy. Our own analysis of the ADAWS rules indicates that, as currently written, they would reduce groundwater pumping over a 100-year period.

As noted in our May 3, 2024 comments regarding the draft ADAWS rules, we strongly support the 25% reduction in groundwater physical availability for each New Alternative Water Supply acquired by a provider. This required cut ensures ADAWS reduces groundwater pumping and facilitates a transition towards renewable supplies. We are equally supportive of the expedited process for modifying a designation to include additional water supplies, which will reduce the hurdles to bringing in new water and streamline the administrative process.

We also highlighted in our May 3, 2024 comments that the groundwater allowances given to ADAWS providers are substantial and will rival or exceed those of our members, who have held designations for nearly 30 years and collectively serve over half the state's population. The volume of physically available groundwater granted to ADAWS providers is similarly large. Since the Phoenix and Pinal AMA Groundwater Models have shown demand will exceed supply over the next 100 years, we recommend that ADWR encourage CAGRD to establish appropriate minimum reporting requirements for ADAWS providers so that these providers are disincentivized from over-relying on unreplenished groundwater pumping.

We strongly believe ADWR's effective administration of ADAWS will be critical to ensure that it sufficiently protects the aquifer and safeguards the groundwater set aside as physically available for existing designated providers. As we have previously indicated in our May 3, 2024 comments, ADWR should consider additional oversight measures for ADAWS providers that are within ADWR's current regulatory authority to pursue. These measures include requiring, as part of the annual reports every designated provider must submit, information 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. Additionally, ADWR could consider a shorter initial designation period for an ADAWS provider, especially if the provider's volume of New Alternative Water Supply is relatively small.

We believe that the ADAWS rules provide a rigorous path for undesignated providers to obtain a designation, which is achievable through dedicated commitment and investment. We acknowledge that the success of ADAWS depends in part on how many undesignated providers will rise to the challenge and pursue designation under this new regulatory framework. Although renewable water supplies are limited in volume and increasingly expensive, designations provide an invaluable benefit to our desert communities. By creating the framework for water providers to plan and invest in their systems and demonstrate a 100-year assured water supply for all their residential and commercial customers, these new designations will help ensure that Arizona will remain thriving and prosperous for current and future generations.

Respectfully,

Warren Tenney
Executive Director

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules of Proposed Rulemaking

1 message

Andrea Wellington <ajw661@gmail.com> Fri, Sep 20, 2024 at 1:52 PM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: inf@podiumclub.com

Date: 9/20/24

Dear Ms. Scantlebury,
I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.
While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is because I am interested in building a race garage at the track and possibly a trackside home.
I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.
Sincerely,
Andrea Wellington
Podium Club Member
Tucson, AZ

Sharon Scantlebury 20th September 2024

Docket Supervisor

Arizona Department of Water Resources

1100 W. Washington St., Suite 310

Phoenix, AZ. 85007

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not currently a resident of Pinal County, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The racetrack I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is because I am interested in moving to a trackside home that I plan to build.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Annette Richmond

26415 Carmel Rancho Blvd 1D

Carmel, CA. 93923

831.206.6005

Audubon | SOUTHWEST

3131 S. Central Ave.
Phoenix, AZ 85040

September 20, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007

Re: Alternative Path to Designation of Assured Water Supply rulemaking

Dear Ms. Scantlebury,

On behalf of Audubon Southwest—the regional office of the National Audubon Society covering Arizona and New Mexico, this correspondence represents our initial response to the proposed rulemaking related to the Alternative Path to Designation of Assured Water Supply (ADAWS).

Audubon protects birds, and the places they need, today and tomorrow. In the desert southwest, the importance of water must be underscored, for birds and for people. We know both need safe and reliable water supplies to thrive. In support of that mission, Audubon is a member of the Water for Arizona Coalition. In 2022, Water for Arizona published its Arizona Water Security Plan, which highlights six key issues that Arizona must tackle to improve our shared water outlook. One of those issues: Renew the Groundwater Management Act and update the rules for managing groundwater within the Active Management Areas (AMAs).

On behalf of Audubon Southwest, I was appointed to serve as a member of the Governor's Water Policy Council. As the Department is aware, Governor Hobbs charged her Council with two objectives and corresponding committees: 1) to produce a package of policy recommendations that strengthen the Assured Water Supply (AWS) Program and ensure the protection of groundwater resources while enabling continued, sustainable growth, and 2) to develop proposals and recommendations for a new rural groundwater management framework.

The Assured Water Supply Committee of the Governor's Water Policy Council was established to review and make recommendations for updates to Assured Water Supply policies to address the challenges revealed by Assured Water Supply modeling projections, while being guided by these principles:

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

In June 2023, the most recent Phoenix AMA groundwater model was released, which found all physically available groundwater within the AMA was fully allocated—indicating that groundwater could no longer be used as a source to establish a proposed subdivision had a 100-year water supply. As a result, subdivision developments within the Phoenix and Pinal AMAs now must seek alternative water supplies to prove they have secured a 100-year water supply.

Designations of Assured Water Supply affirm that a Designated Provider (water utility or municipality), can demonstrate adequate investment and planning in their water supply portfolio such that the urban growth occurring within their boundaries has the assurance of a 100-year water supply. Conversely,

individual Certificates of Assured Water Supply occurs at a subdivision-by-subdivision level, with no requirement to ensure a 100-year water supply after the initial analysis.

There is a general recognition that for those who want to become Designated Providers, some adjustments to the current rules are needed to offer a path for responsible, incremental growth, while alternative water supplies are brought online. Finding a way to allow for responsible growth in the *near* term, while upholding the consumer protections of the Assured Water Supply Program for the *long* term, is critical to our collective water future. It is essential that these needed adjustments occur without undermining the Assured Water Supply Program and the Groundwater Management Act.

One of the proposals we put forth as a Council was the Alternative Path to Designation of Assured Water Supply (ADAWS) Proposal, which could encourage more water providers and municipalities to become "designated."

The ADAWS proposal approved by the Governor's Water Policy Council features a 30 percent reduction in grandfathered groundwater pumping as new water supplies are brought on to facilitate an incremental transition away from groundwater over time. However, the current rules propose a 25 percent reduction. It is difficult to determine from the information provided if the current 25 percent proposed reduction is consistent with advancing the respective AMA management goals.

Additionally, given alternative water supplies will likely come from places outside the area where they will be used, from an environmental and community perspective, the potential impacts of the development of these alternative water supplies needs to be assessed, evaluated, and, where possible, mitigated. All pertinent environmental reviews should be conducted in an open and transparent manner. When evaluating the viability and feasibility of obtaining alternative water supplies, there should be no degradation of existing laws and protections.

The Alternative Path to Designation of Assured Water Supply rulemaking process allows for a targeted opportunity to encourage eligible water providers and municipalities to obtain a Designation. Over the long term, the ADAWS rule could reduce groundwater mining while benefiting customers purchasing a home within a Designated Provider's service area because they would experience expanded protections and investments in water supplies beyond groundwater, if done correctly. It should not, however, be used to expand reliance on fossil groundwater or to weaken the consumer protections that are essential to the Assured Water Supply Program and Groundwater Management Act.

Thank you for this opportunity to provide comments on this rulemaking process.

Sincerely,

Haley Paul
Arizona Policy Director, Audubon Southwest

PODIUM CLUB MEMBER
09/20/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is because I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Bob Macherione

24216 N 83rd street

Scottsdale, AZ 85255

Casa Grande Dairy Co.

Mesa-Casa Grande Land Co, LLC

PO Box 12730 **Casa Grande, AZ 85130**

9/20/2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a part of the Pinal County dairy and farming economy, these rules are important to our business as it simultaneously protects agriculture's water supply while encouraging development in areas of Pinal County best suited for growth. It is important to have a vibrant economy that attracts more businesses and high quality workers who can live and work in our communities.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Jim Boyle

Central Az Land LLC

PO Box 10730

Casa Grande, AZ 85130

September 20, 2024

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Active Manager

Steve Wallis

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

chris corso <corsoster@gmail.com>
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

Fri, Sep 20, 2024 at 2:03 PM

PODIUM CLUB MEMBER

September 20, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Chris Corso

--
Chris Corso

(203) 545-9007 - Mobile

THE LAW OFFICE OF
NATHAN C. COOLEY, PLC

1744 S. Val Vista Drive, #201
Mesa, AZ 85204
T 480.214.4741
F 480.240.1340
nate@ncooleylaw.com

SENT VIA REGULAR MAIL AND EMAIL (docketsupervisor@azwater.gov)

September 20, 2024

Sharon Scantlebury
Docket Supervisor ADWR
1110 W. Washington St.
Suite 310
Phoenix, AZ 85007

Re: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury,

I would like to express my gratitude to the Governor's Office and the team at the Arizona Department of Water Resources (ADWR) for their collaboration with stakeholders in developing the new Assured Water Supply rules, and in particular the policy recommendation that is the "Alternative Path to Designation of a 100-Year Assured Water Supply". A reliable and sustainable water supply is crucial to the continued prosperity and future development of Pinal County's economy, and I am confident these regulations will help establish a sustainable water supply for the Pinal Active Management Area.

With this letter, I am voicing my full support for the proposed rules and strongly urge swift implementation of the rules.

As an agricultural landowner with family that farms in Pinal County, these rules will provide a smooth runway—as market conditions dictate, of course—for agricultural operations to eventually transition into residential and commercial development.

Once again, I want to acknowledge the efforts of the Governor's Office and ADWR staff in taking this critical step and doing the work that will benefit all of Pinal County.

Sincerely,

Nathan Cooley

CREATION

1200 NORTH 52ND STREET
PHOENIX, ARIZONA 85008

PHONE: (480) 966-4001
FAX: (602) 225-2788
desellers@lgedesignbuild.com

September 20th, 2024

To: Sharon Scantlebury, Docket Supervisor Arizona Department of Water Resources

1110 W. Washington St., Suite 310 Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. As a direct stakeholder in over 1,000 acres in Pinal County, through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

David Sellers

Co-Founder, Creation

CEO, LGE Design Build

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Alternative Designation of Assured Water Supply

1 message

Brian Hanger <bhanger@latigoland.com> Fri, Sep 20, 2024 at 10:44 AM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>

Please see attached letter for your review.

D&G owns a farm in the vicinity of Central Arizona College. We zoned the parcel several years ago through Coolidge as Toltec Point.

Please contact me with any questions.

LATIGO LAND & CAPITAL
W. Brian Hanger
Designated Broker
2727 W Frye Rd. St 220
Chandler, AZ 85224
(480)229-2200

ADWR Letter.docx
15K

September 20, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a landowner without a Certificate of Assured Water Supply, these rules are important to me because I have taken the necessary step towards developing my property but did not get the application in in time for the CAWS. I own just short of 200 acres between Coolidge and Casa Grande in the vicinity of Central Arizona College. I have an Arizona Water Company main line running on two sides of the property.

As a part of the agricultural economy, these rules are important to me because we have practiced water efficiency in farming operations for many years under the guidelines of the Grandfathered Water Rights efforts. Literally stewards of the land in knowing that development may be a possibility someday.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. This is an important step forward for all of Pinal County,

Sincerely,

W. Brian Hanger

Managing Partner, D&G Investments

PODIUM CLUB MEMBER

DATE: 09/20/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Darren Webster

PODIUM CLUB MEMBER

DATE 09/20/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

NAME David Peck

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Allen Cooley <cooley.allen@gmail.com> Fri, Sep 20, 2024 at 3:28 PM
To: docketsupervisor@azwater.gov

9/20/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

Iappreciate all the efforts of the Go-vernor's Office and th
e staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Allen Cooley
Ecoshield Pest Control
Partner
www.ecoshieldpest.com

FOOTHILLS WEST, INC.

Steven Wallis
P.O. Box 10730
Casa Grande, AZ 85230

PHONE 520-560-5678
EMAIL Foothillswestinc@gmail.com
ROC # 189138

September 20, 2024

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

President
Steve Wallis

PODIUM CLUB MEMBER

September 20, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Frederick Wiswell

Frederick Wiswell

Sharon Scantlebury 20th September 2024

Docket Supervisor

Arizona Department of Water Resources

1100 W. Washington St., Suite 310

Phoenix, AZ. 85007

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, which we believe will create a sustainable water supply in the Pinal AMA.

Through this letter, I am expressing my direct support for the new rules and encouraging their adoption as soon as possible.

I own Hammerhead Racing, Inc., an AZ Corporation. As soon as feasible I am moving my business to Podium Club at Attesa.

Being a future Pinal County business owner, I know it is important to have a vibrant economy that inspires growth and attracts more highly skilled workers who can become valued members of our community.

A stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering the overall economic health and quality of life in our community.

I genuinely appreciate this initiative, as new water rules will mark a crucial step forward for all of Pinal County.

Sincerely,

Jens Plougmann, President

Hammerhead Racing, Inc.

3702 E. Desert Cove Ave.

Phoenix, AZ. 85028

602.330.6995

PODIUM CLUB MEMBER

DATE

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Jayson Citron

RESIDENT

September 20,2024

Dear Ms. Scantlebury:

As a resident of Pinal County, please accept this letter as my direct support for the new Assured Water Supply rules for Pinal County.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working to develop these new rules, which will certainly go a long way in building a more vibrant economy.

We all know how a stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering overall economic health and a higher quality of life in our community.

Thank you for pushing this solution forward.

Sincerely,

Jeff Woodbury

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comment pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

Julie Woodbury <julswoodbury@gmail.com>
To: Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Fri, Sep 20, 2024 at 4:03 PM

September 20,2024

Dear Ms. Scantlebury:

As a resident of Pinal County, please accept this letter as my direct support for the new Assured Water Supply rules for Pinal County.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working to develop these new rules, which will certainly go a long way in building a more vibrant economy.

We all know how a stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering overall economic health and a higher quality of life in our community.

Thank you for pushing this solution forward.

Sincerely,

Jeff Woodbury

[Quoted text hidden]

Julie Woodbury
julswoodbury@gmail.com

JEFFRY L. COOLEY
2357 E. Flossmoor Circle
Mesa, AZ 85204
Office: 480-988-3110 Cell: 480-710-7337
E-Mail: jeff@cooleystation.com

September 20, 2024

Sharon Scantlebury
Docket Supervisor ADWR
1110 W. Washington St.
Suite 310
Phoenix, AZ 85007

Re: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury,

I would like to express my appreciation to the Governor's Office and the staff at the Arizona Department of Water Resources for their efforts in working with the stakeholders to develop the new Assured Water Supply rules, in particular the policy recommendation that is the "Alternative Path to Designation of a 100-Year Assured Water Supply". A reliable and sustainable water supply is crucial to the continued prosperity and future development of Pinal County's economy. I feel confident that these regulations will help establish a sustainable water supply for the Pinal Active Management Area.

With this letter, I am expressing my support for the new rules and encourage their adoption as soon as possible.

As an agricultural landowner in Pinal County, these rules will help my land to have a smooth transition into residential and commercial development when market conditions dictate.

Again, I would like to express my gratitude for the efforts put forth by the Governor's Office and ADWR staff in embarking on this critical step to benefit Pinal County.

Sincerely,

Jeffry L. Cooley
Pinal County Property Owner

Sharon Scantlebury 20th September 2024

Docket Supervisor

Arizona Department of Water Resources

1100 W. Washington St., Suite 310

Phoenix, AZ. 85007

Dear Ms. Scantlebury:

I am writing to add my vigorous support to the proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not currently a resident of Pinal County, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The racetrack represents the first project at this unique master-planned, multi-use community, a community that is the main reason that I sold my house in Scottsdale a few years ago with the goal of moving to the track allowing me to continue enjoying a lifelong passion for cars and motorcycles.

The development only needs new water rules to begin in earnest, which is especially important to me personally, as I do plan on making this my home. A sustainable water supply is the cornerstone of this dream, in addition to being the driver of all aspects for a strong economy in Pinal County.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Yours Sincerely,

Jens Plougmann

3702 E. Desert Cove Ave.

Phoenix, AZ. 85028

602.330.6995

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Subject: RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

kenny thomas <kenny@ktglobal.agency> Fri, Sep 20, 2024 at 1:34 PM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: "info@podiumclub.com" <info@podiumclub.com>

BUSINESS OWNER

DATE: 9/20/2024

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, which we believe will create a sustainable water supply in the Pinal AMA.

Through this letter, I express my direct support for the new rules and encourage their adoption as soon as possible.

As a Pinal County business owner, I know it is essential to have a vibrant economy that inspires growth and attracts more high-quality workers who can become valued members of our community.

A stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering our community's overall economic health and quality of life.

I genuinely appreciate this initiative, as new water rules will mark a crucial step forward for all of Pinal County.

Sincerely,

NAME: Kenneth Thomas

BUSINESS: KT Global Consulting, LLC

KT GLOBAL
CONSULTING

KENNY THOMAS
Owner & CEO at KT-GLOBAL

Phone (240) 395-3873
kenny@ktglobal.agency
support@ktglobal.agency
17710 N. Kari Lane Maricopa,
AZ 85139

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PODIUM CLUB MEMBER

September 20, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Matthew Hollander

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

MB Media Brokers <dlevine@mbmediabrokers.com> Fri, Sep 20, 2024 at 1:28 PM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: Podium Club <info@podiumclub.com>

9/20/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and thes
taff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

David Levine

Sent from my iPhone

PODIUM CLUB MEMBER

20-SEP-2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Mike Earlywine

PODIUM CLUB MEMBER

Friday, September 20, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Peter J. Kight

Rich Fairservis

3955 S Centre Point Parkway

Chandler, AZ. 85286

September 20th, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Rich Fairservis

307-262-1033

PODIUM CLUB MEMBER

9/20/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Ron Arieli

President | RiderCoach | Total Control Instructor
TEAM Arizona MotorcyclistTraining Centers
Mobile:480.236.2997
Office:480-998-9888
ron@motorcycletraining.com
https://www.motorcycletraining.com
TEAM Arizona YouTube https://www.youtube.com/user/TeamArizona1 TEAM Arizona Facebook https://www.facebook.com/TEAMArizona/
TEAM Arizona Instagram https://www.instagram.com/team.arizona/
TEAM Arizona Twitter https://twitter.com/TEAMArizonaMC

Gmail

Sharon Scantlebury <sscantlebury@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Scott West <swest2507@gmail.com> Fri, Sep 20, 2024 at 12:35 PM
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa and frequently visit Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally. One reason I became a member is I am interested in purchasing one of the planned trackside homes and shops trackside.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Thank you,

Scott West
480-549-1533

September 20, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a full time resident, my wife and I are part time residents. I am a member of the Podium Club at Attesa, and we live in the Casa Grande area 4-6 months per year. The race track I love represents the first project at this unique master-planned, multi-use community. Attesa only needs new water rules to begin development in earnest.

This is especially important to me. One reason I became a member, is because we are interested in moving to a trackside home that we own in the Casa Grande area. We might even built a race shop at the track, if complete development takes place.

We would love to be full time residents of Arizona. Developing Attesa can make that happen for us.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR). I encourage the approval and adoption of the new rules as soon as possible.

Thank you for your time.

Sincerely,

Wm Schwab

William (Tripp) Schwab

PODIUM CLUB MEMBER

DATE

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

NAME

DATE

Dear Ms. Scantlebury:

As a resident of Pinal County, please accept this letter as my direct support for the new Assured Water Supply rules for Pinal County.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working to develop these new rules, which will certainly go a long way in building a more vibrant economy.

We all know how a stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering overall economic health and a higher quality of life in our community.

Thank you for pushing this solution forward.

Sincerely,

NAME

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

Braedin Whitney <prelawgnome069@gmail.com> Sat, Sep 21, 2024 at 11:30 AM
To: docketsupervisor@azwater.gov, "info@podiumclub.com" <info@podiumclub.com>

RESIDENT DATE 9/21/24 Dear Ms. Scantlebury: As a resident of Pinal County, please accept this letter as my direct support for the new Assured Water Supply rules for Pinal County. I appreciate all the efforts of the Governor's Office and thestaff at the Arizona Department of Water Resources (ADWR) for working to develop these new rules, which will certainly go a long way in building a more vibrant economy. We all know how a stable water supply is crucial for maintaining strong property values, supporting businesses,and fostering overall economic health and a higher qualityof life in our community. Thank you for pushing this solution forward. Sincerely, Braedin M Whitney

PODIUM CLUB MEMBER

DATE 9/21/24

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

NAME Brian Bush

Sept. 21,2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a driver at the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Chris Wandell

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Clyde Van Blarcum <cvanblarcum@cox.net>
Sat, Sep 21, 2024 at 7:38 AM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>

9/21/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is that I am interested in moving to a trackside home that I will own.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Clyde Van Blarcum

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

1 message

doug dougwellington.com <doug@dougwellington.com> Sat, Sep 21, 2024 at 2:22 PM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>

Dear Ms. Scantlebury:

I'm a current resident of Pima County and a potential resident of Pinal County. I'm a member of the Podium Club at Attesa and would like to build a home there and take up residency. I'm also interested in setting up my business at Attesa, so on both a personal and professional level, I am concerned with reliable sources of water. The proposed new ADAWS rules would benefit me, my family, and my business, as well as many others associated with Attesa and other developing businesses in Pinal County.

Thanks for your consideration,
Doug Wellington

PODIUM CLUB MEMBER

9/21/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Dylan Hatch

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

elliott freireich <gutenberg918@gmail.com>
To: docketsupervisor@azwater.gov
Cc: Attesa Newsletter <info@podiumclub.com>

Sat, Sep 21, 2024 at 2:55 PM

Sept. 21, 2024

Dear Ms. Scantlebury:

The new rules regarding an Assured Water Supply for Pinal County are an appropriate step for growth in the area.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. "My" race track (the one I am an initial member of) represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in building a race shop at the track. As long as the track is successful I will continue to support the hotels, restaurants and businesses in Casa Grande

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Elliott Freireich

Litchfield Park, Az

retired former publisher, West Valley View newspaper

Gabriele Baer
3500 E. Lincoln Drive, Unit 44
Phoenix, AZ 85018
C 602-549-3521

September 21, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The racetrack I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Should you have any questions, please feel free to call me.

Sincerely,

Gabi Baer

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules

1 message

Yahoo <glevy74@att.net> Sat, Sep 21, 2024 at 10:17 AM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: Podiumclub Info <info@podiumclub.com>

09/21/2024

Dear Ms Scantlebury,

I am a resident of Pinal County, specifically Maricopa. Please accept this letter as my support for the new Assured Water Supply rules for Pinal County.

I do appreciate the efforts of the Governors office and the Arizona Department of Water Resources for working on these new rules, which will certainly help the economy or our county.

Living in Arizona for many decades makes us all aware of how crucial a stable water supply is to maintain our property, business and lifestyles we enjoy in our community

Thanks you for pushing this solution forward.

Sincerely,

Gordon E Levy

Maricopa AZ

Hal Baer
3500 E. Lincoln Drive, Unit 44
Phoenix, AZ 85018
C 602-524-0833

September 21, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The racetrack I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Hal Baer

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

Holly O. <applestar13@gmail.com>
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

Sat, Sep 21, 2024 at 2:24 PM

September 20th, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Holly O'Neal

PODIUM CLUB MEMBER

9/21/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Hurley Hatch

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

john Mabry <johnduc247@gmail.com>
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

Sat, Sep 21, 2024 at 11:04 AM

PODIUM CLUB MEMBER

DATE 9/21/24

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and thes
taff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

John Mabry

Sent from my iPhone

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Gordon Levy <gordon@levyracing.com> Sat, Sep 21, 2024 at 10:39 AM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

09/21/2024

Dear Ms Scantlebury

Thank you for your efforts with the Governor's office and the Arizona Department of Water Resources for working with stakeholders to develop these new Assured Water Supply rules, which will certainly help and stable water supply in the Pinal AMA.

This letter is to show my support for the new rules and their adaptation as soon as possible.

As a Pinal County business owner, a vibrant economy helps me hire more and expand adding to the health and growth of our community.

A stable water supply is crucial to that growth, maintaining property values, business expansion and a happy workforce is very positive for Pinal County.

I appreciate the initiative and the efforts, these new rules will be a crucial step forward for all of Pinal County.

Gordon Levy

LR Classics LLC

Maricopa AZ

--
Thanks, Gordon Levy
520-494-2745
www.lrclassicsllc.com
www.facebook.com/levyracing

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Robert Paulsen <lifefit7@yahoo.com>
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

Sat, Sep 21, 2024 at 11:44 AM

September 21, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and thes
taff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Robert Paulsen

Sent from my iPhone

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

race65rose@aol.com <race65rose@aol.com> Sat, Sep 21, 2024 at 5:36 PM
Reply-To: "race65rose@aol.com" <race65rose@aol.com>
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>, Elliott Freireich <gutenberg918@gmail.com>, "info@podiumclub.com" <info@podiumclub.com>

Steven Jeffries
Queen Creek, AZ 85142

September 21, 2024

Dear Ms. Scantlebury:
I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a user/member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as I look forward to the track area developing into the world class destination that is planned.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,
Steve Jeffries

Sent from AOL on Android

PODIUM CLUB MEMBER

21 September 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Steve Zurga

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Trey Smith <trey@smithiii.co> Sat, Sep 21, 2024 at 10:35 AM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: Attesa Newsletter <info@podiumclub.com>

09/21/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Trey Smith

480.544.5588

III

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

Wesley Goins <wgoins921@icloud.com>
Sat, Sep 21, 2024 at 11:30 AM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

RESIDENT

DATE 9/21/24
Dear Ms. Scantlebury:
As a resident of Pinal County, please accept this letter as my direct support for the new Assured Water Supply rules for Pinal County.
I appreciate all the efforts of the Governor's Office and thestaff at the Arizona Department of Water Resources (ADWR) for working to develop these new rules, which will certainly go a long way in building a more vibrant economy.
We all know how a stable water supply is crucial for maintaining strong property values, supporting businesses,and fostering overall economic health and a higher qualityof life in our community.
Thank you for pushing this solution forward.
Sincerely,
Wesley goins

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

William Garland <wmjgarland@gmail.com>
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: Podium Club <info@podiumclub.com>

Sat, Sep 21, 2024 at 2:17 PM

09.21.24

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

William Garland

Member Letter.docx
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PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

ANDERSON RD 80, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

RE: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc, which manages properties in Pinal County, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of **ANDERSON RD 80, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

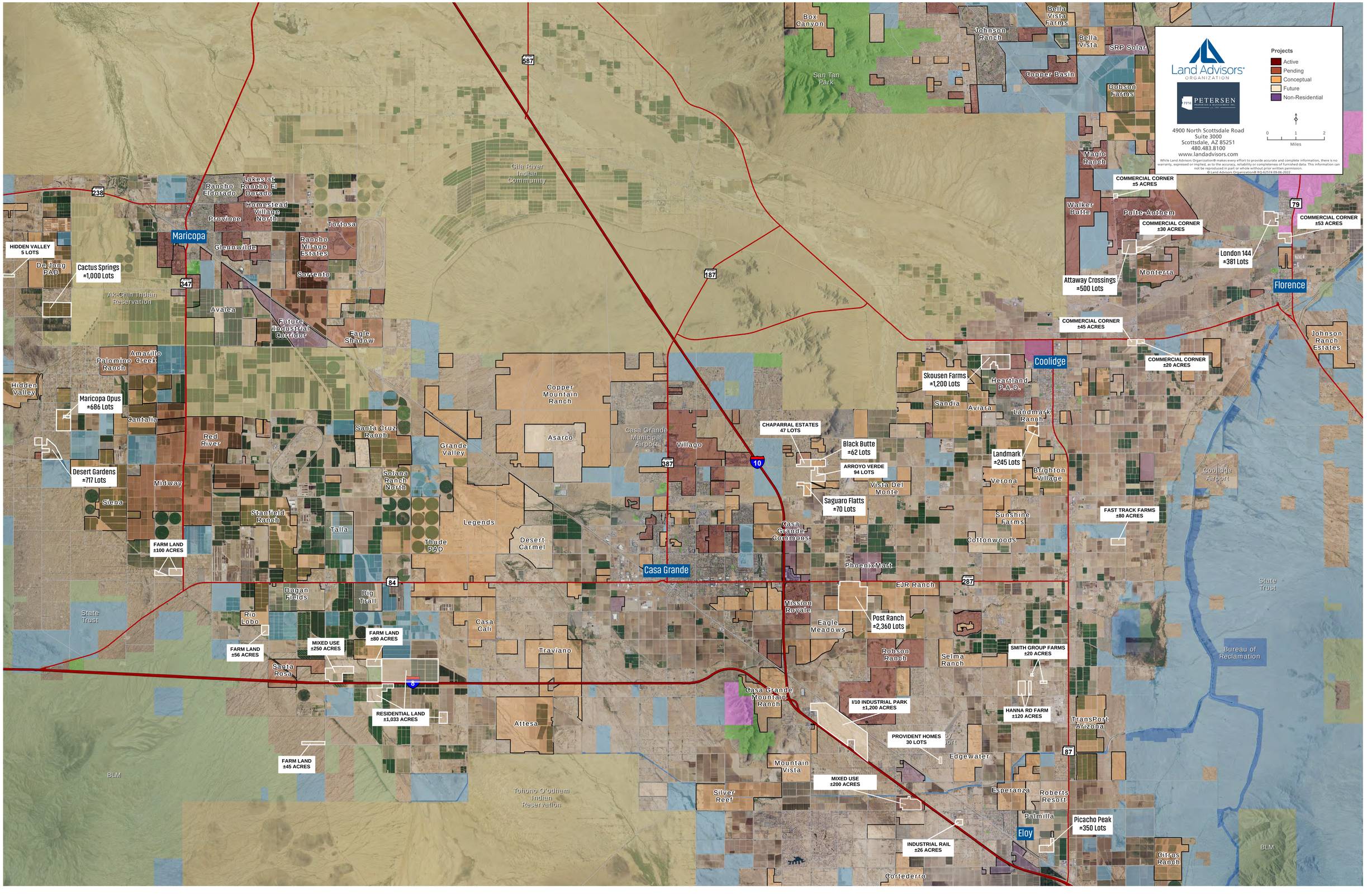
Sincerely,

Tanner Petersen
Manager
ANDERSON RD 80, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

3369 E. Queen Creek Rd, Ste 101
Gilbert, AZ 85297
www.PPMLand.com


Land Advisors ORGANIZATION
PETERSEN
4900 North Scottsdale Road
Suite 3000
Scottsdale, AZ 85251
480.483.8100
www.landadvisors.com
Projects
Active
Pending
Conceptual
Future
Non-Residential
0 1 2
Miles
Maricopa
Casa Grande
Coolidge
Florence
Eloy
HIDDEN VALLEY 5 LOTS
Cactus Springs ±1,000 Lots
Maricopa Opus ±686 Lots
Desert Gardens ±717 Lots
FARM LAND ±100 ACRES
FARM LAND ±56 ACRES
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FARM LAND ±80 ACRES
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CHAPARRAL ESTATES 47 LOTS
Black Butte ±62 Lots
ARROYO VERDE 94 LOTS
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I/10 INDUSTRIAL PARK ±1,200 ACRES
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INDUSTRIAL RAIL ±26 ACRES
SMITH GROUP FARMS ±20 ACRES
HANNA RD FARM ±120 ACRES
FAST TRACK FARMS ±80 ACRES
Skousen Farms ±1,200 Lots
Landmark ±245 Lots
Picacho Peak ±350 Lots
COMMERCIAL CORNER ±5 ACRES
COMMERCIAL CORNER ±30 ACRES
COMMERCIAL CORNER ±45 ACRES
COMMERCIAL CORNER ±20 ACRES
COMMERCIAL CORNER ±53 ACRES
Attaway Crossings ±500 Lots
London 144 ±381 Lots
Gila River Indian Community
Ak-Chin Indian Reservation
Tohono O'odham Indian Reservation
Copper Mountain Ranch
Casa Grande Municipal Airport
Coolidge Airport
Bureau of Reclamation
State Trust
BLM

PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Arroyo Arizona, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

RE: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc, which manages properties in Pinal County, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of **Arroyo Arizona, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

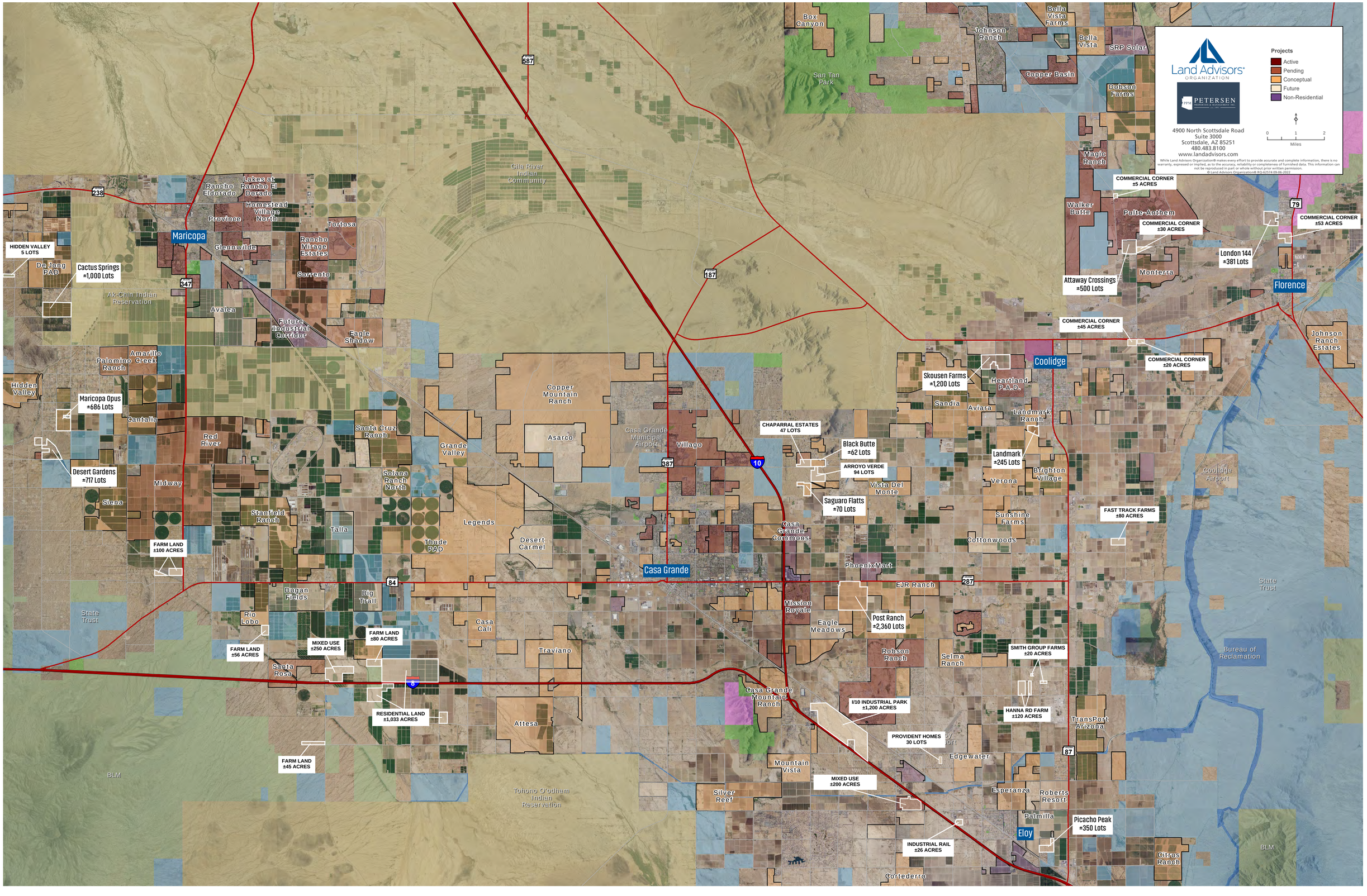
Sincerely,

Tanner Petersen
Manager
Arroyo Arizona, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

3369 E. Queen Creek Rd, Ste 101
Gilbert, AZ 85297
www.PPMLand.com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COMMERCIAL CORNER ±20 ACRES
COMMERCIAL CORNER ±53 ACRES
Attaway Crossings ±500 Lots
London 144 ±381 Lots
Gila River Indian Community
Ak-Chin Indian Reservation
Tohono O'odham Indian Reservation
Copper Mountain Ranch
Casa Grande Municipal Airport
Coolidge Airport
Bureau of Reclamation
State Trust
BLM

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Arroyo Verde 35, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

RE: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc, which manages properties in Pinal County, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of **Arroyo Verde 35, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

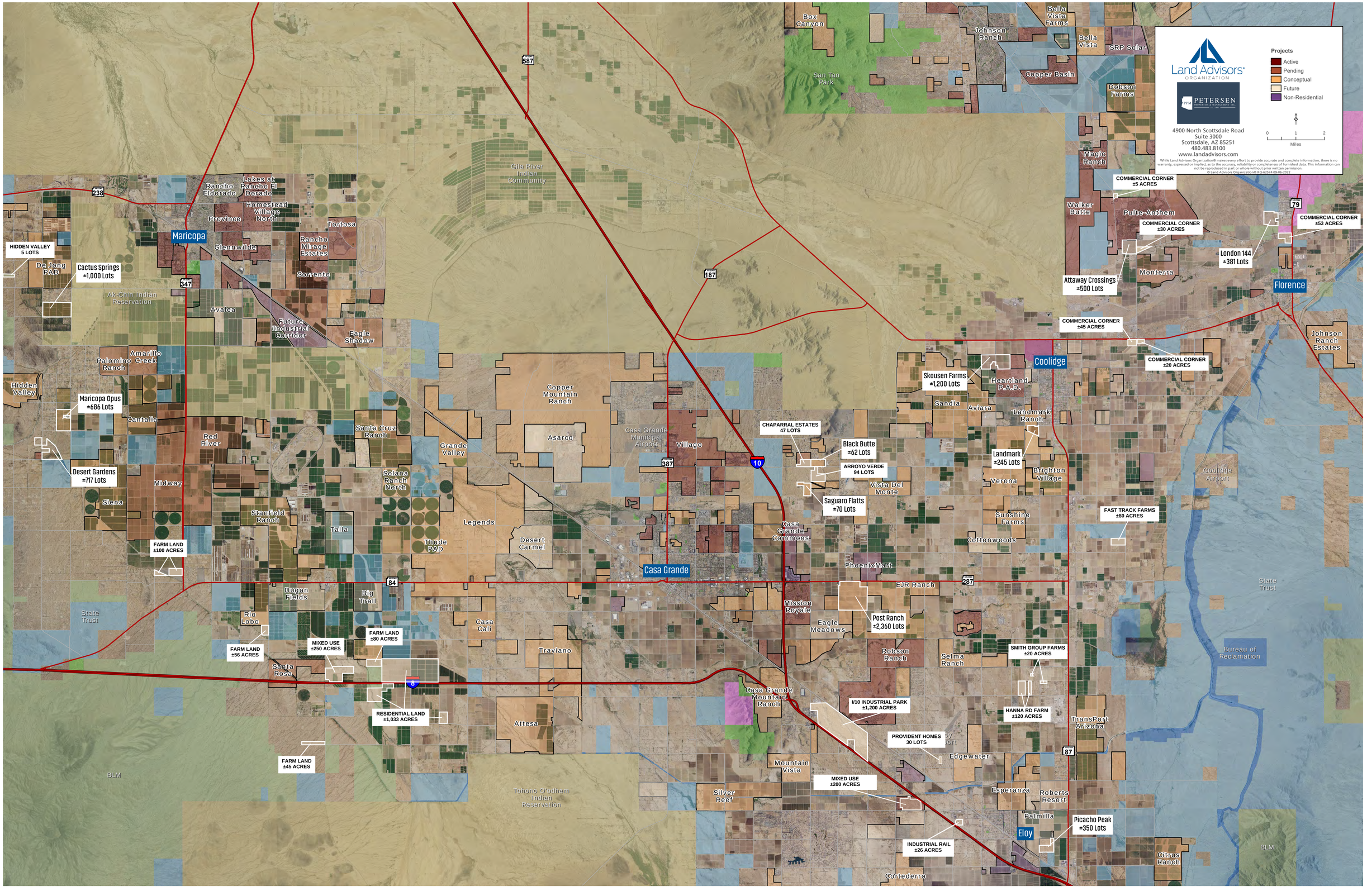
Sincerely,

Tanner Petersen
Manager
Arroyo Verde 35, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

3369 E. Queen Creek Rd, Ste 101
Gilbert, AZ 85297
www.PPMLand.com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Gila River Indian Community
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Tohono O'odham Indian Reservation
Copper Mountain Ranch
Casa Grande Municipal Airport
Coolidge Airport
Bureau of Reclamation
State Trust
BLM

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PROPERTIES & MANAGEMENT INC.
est. 1991

Attaway & 287, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

RE: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury,

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A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

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On behalf of **Attaway & 287, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Attaway & 287, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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Gilbert, AZ 85297
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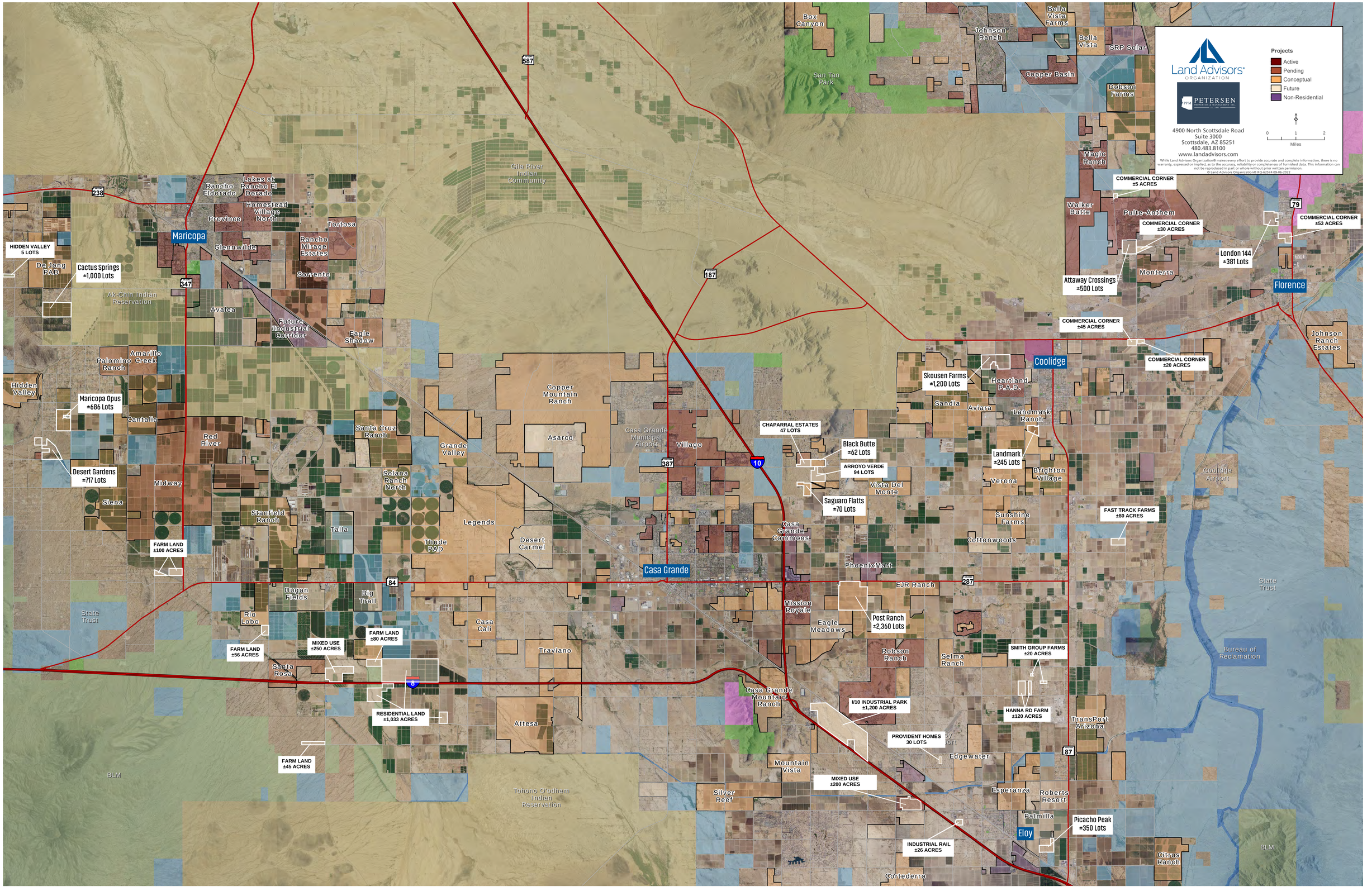
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Coolidge
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Eloy
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Bureau of Reclamation
State Trust
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PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

ATTAWAY CROSSINGS 147, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

RE: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

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On behalf of **ATTAWAY CROSSINGS 147, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
ATTAWAY CROSSINGS 147, LLC

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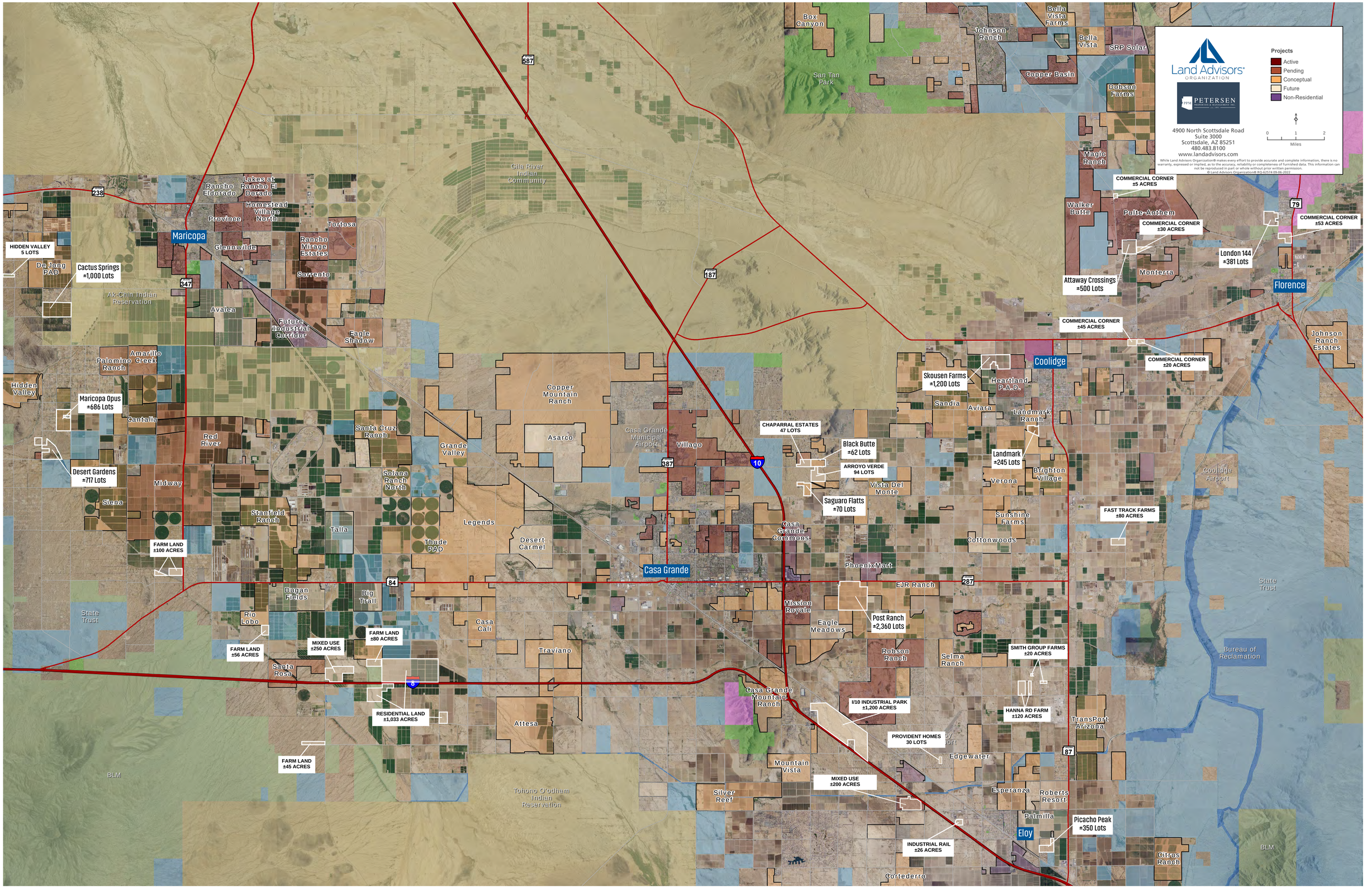
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Black Butte 80, LLC
9.22.24

Sharon Scantlebury
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Arizona Department of Water Resources
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Phoenix, AZ 85007

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On behalf of **Black Butte 80, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Black Butte 80, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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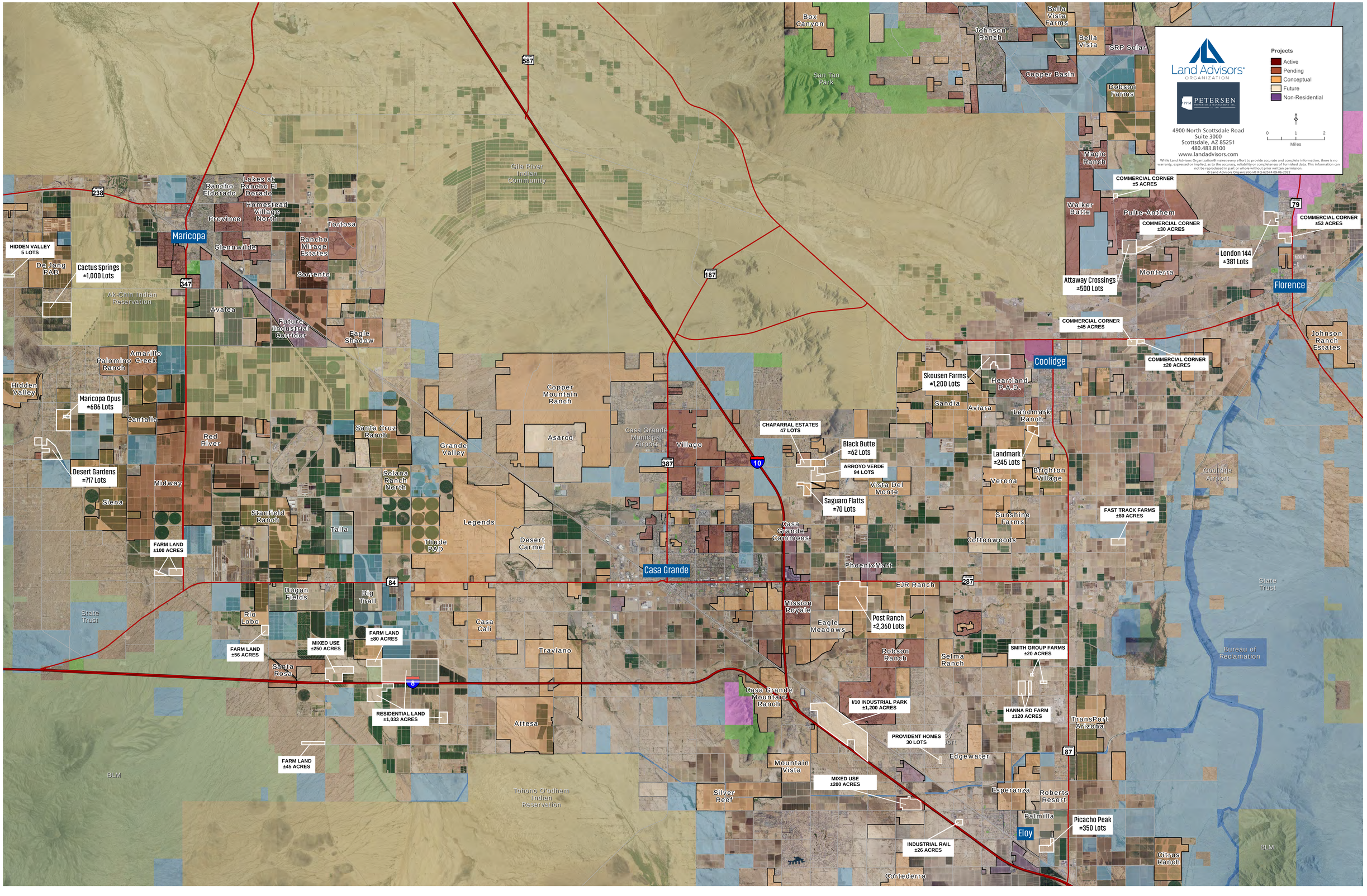
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Cactus Springs, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

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On behalf of **Cactus Springs, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Cactus Springs, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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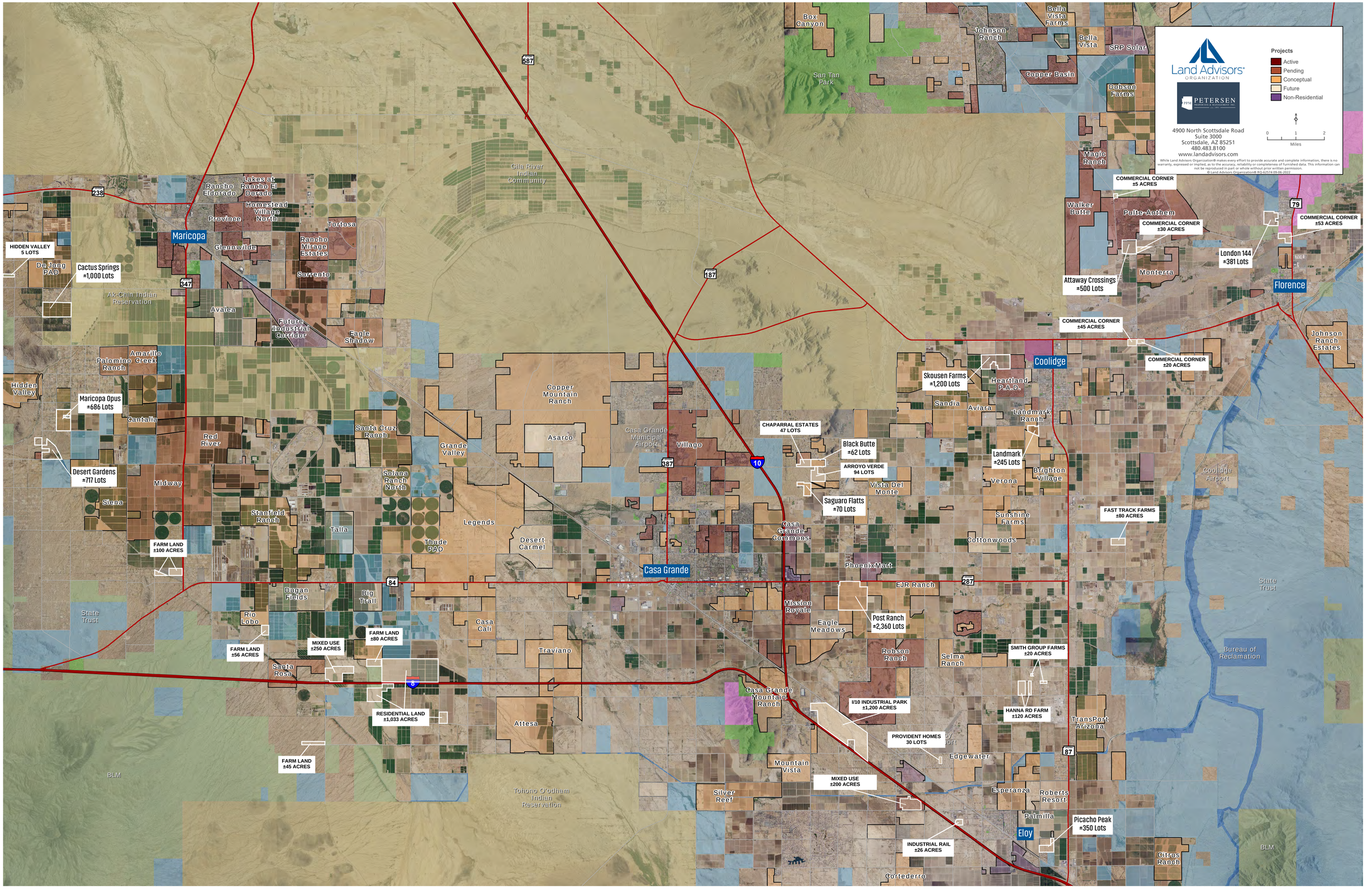
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Chaparral 13, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

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On behalf of **Chaparral 13, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Chaparral 13, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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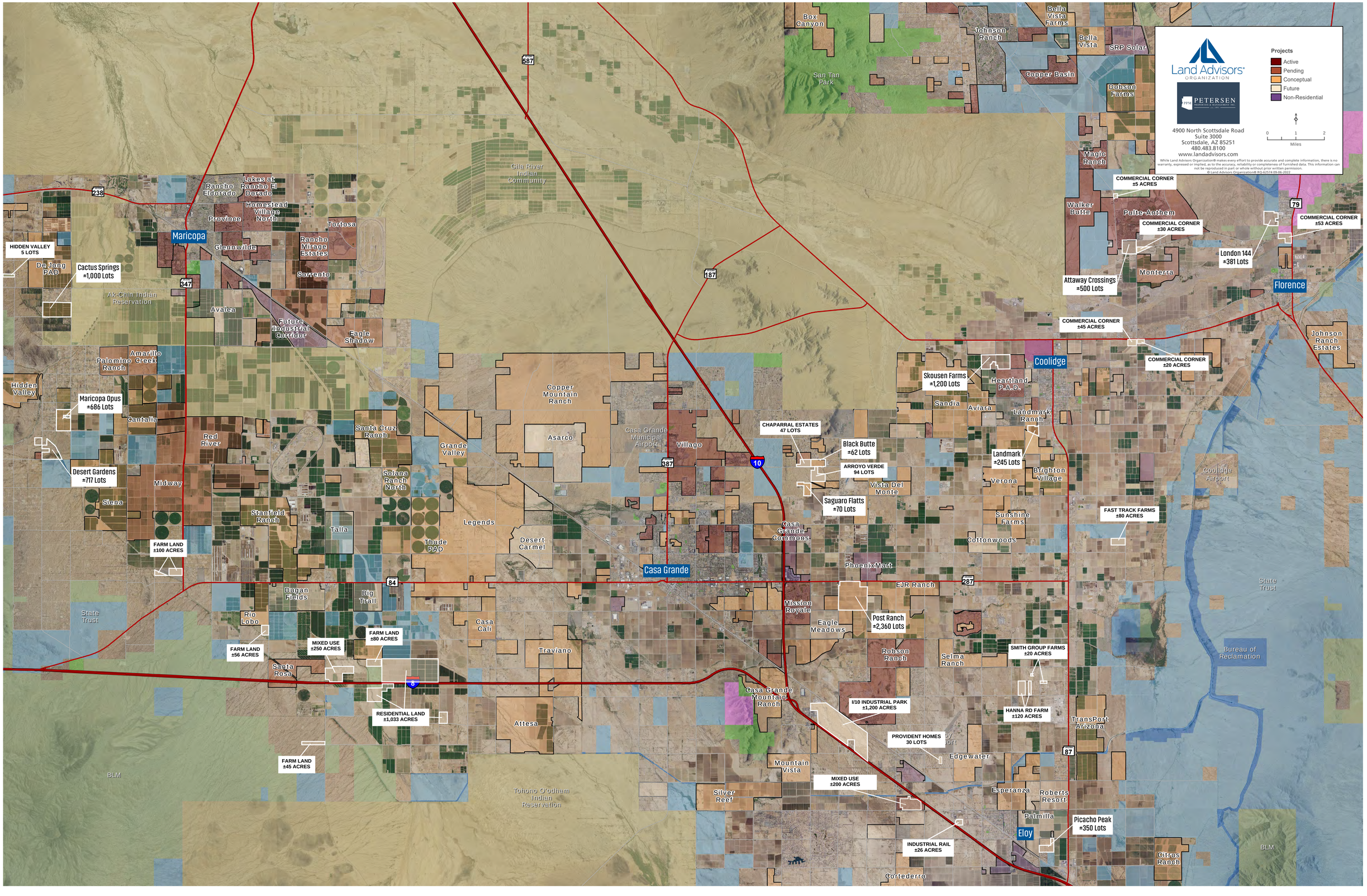
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PODIUM CLUB MEMBER

DATE: 09/22/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Chris Thompson

PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Fast Track Rd 80, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

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On behalf of **Fast Track Rd 80, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Fast Track Rd 80, LLC

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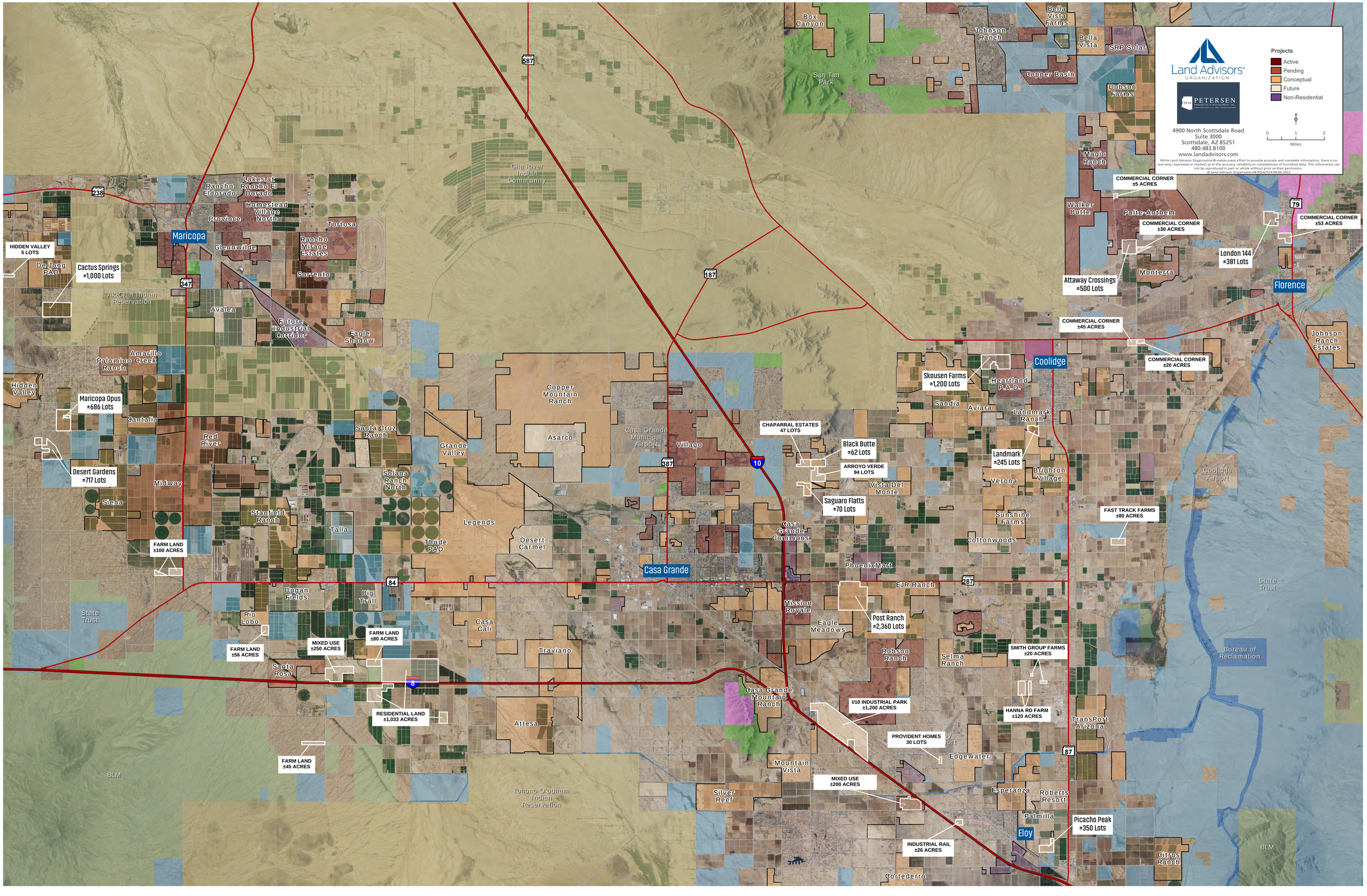
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Florence PG 53, LLC
9.22.24

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On behalf of **Florence PG 53, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Florence PG 53, LLC

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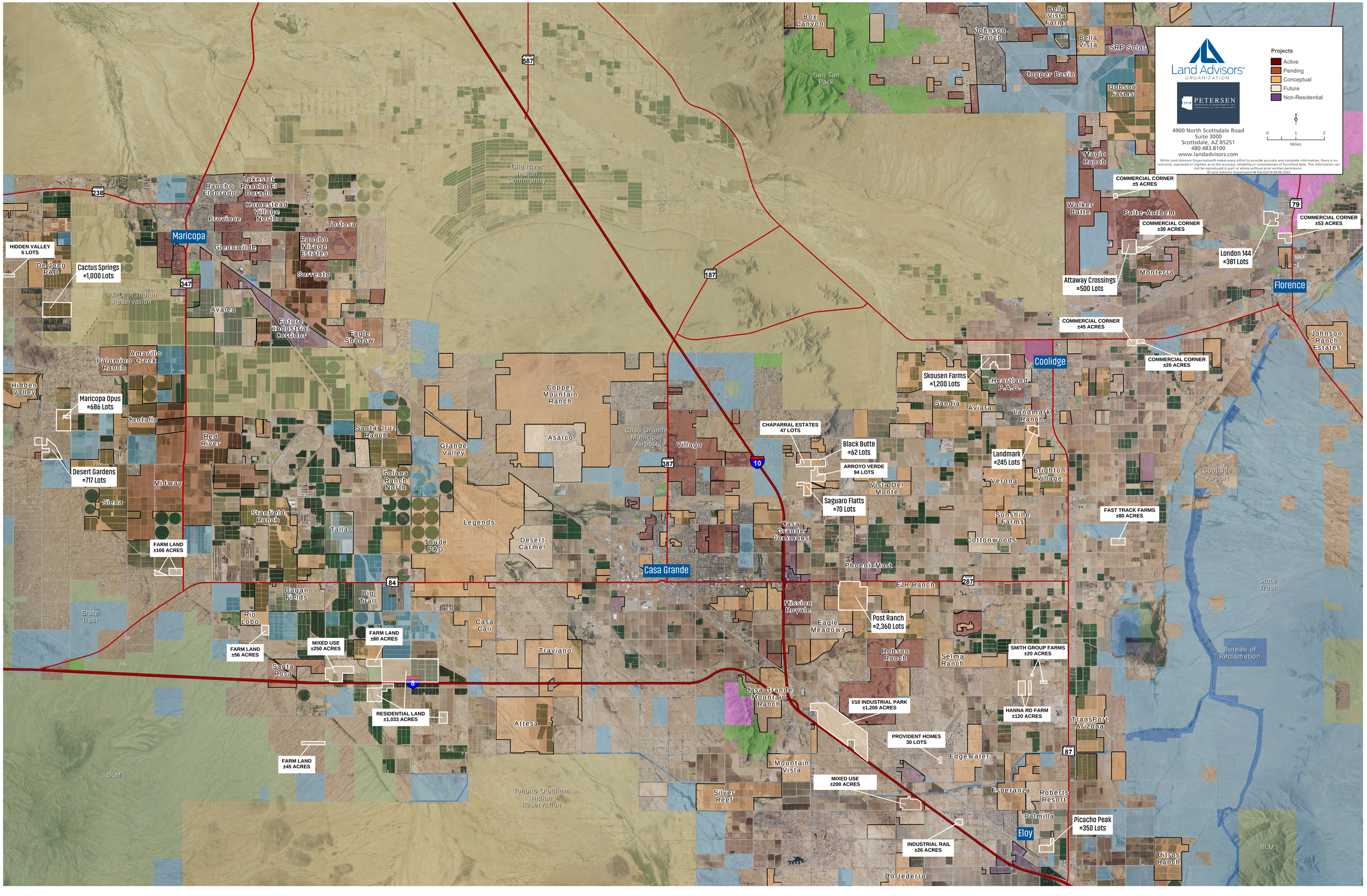
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Casa Grande Municipal Airport
Coolidge Airport
Bureau of Reclamation
State Trust
BLM

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

Gray Fowler <gray_fowler@yahoo.com> Sun, Sep 22, 2024 at 9:19 AM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

22 Sept. 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.
While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.
I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,
Gray Fowler

PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Hanna Rd 120, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

RE: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

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On behalf of **Hanna Rd 120, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

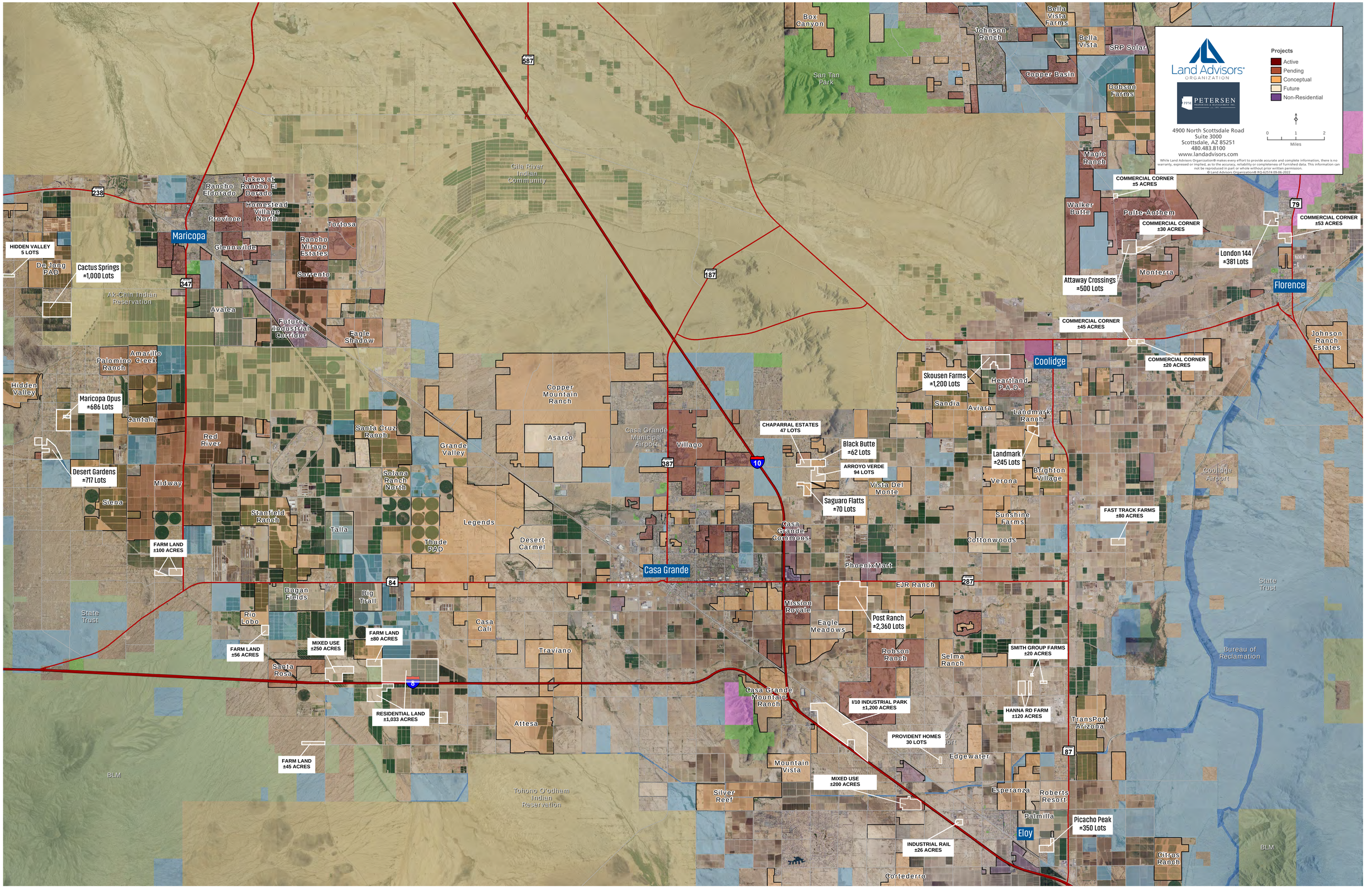
Sincerely,

Tanner Petersen
Manager
Hanna Rd 120, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

3369 E. Queen Creek Rd, Ste 101
Gilbert, AZ 85297
www.PPMLand.com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BLM

PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Heritage Creek 141, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

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On behalf of **Heritage Creek 141, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Heritage Creek 141, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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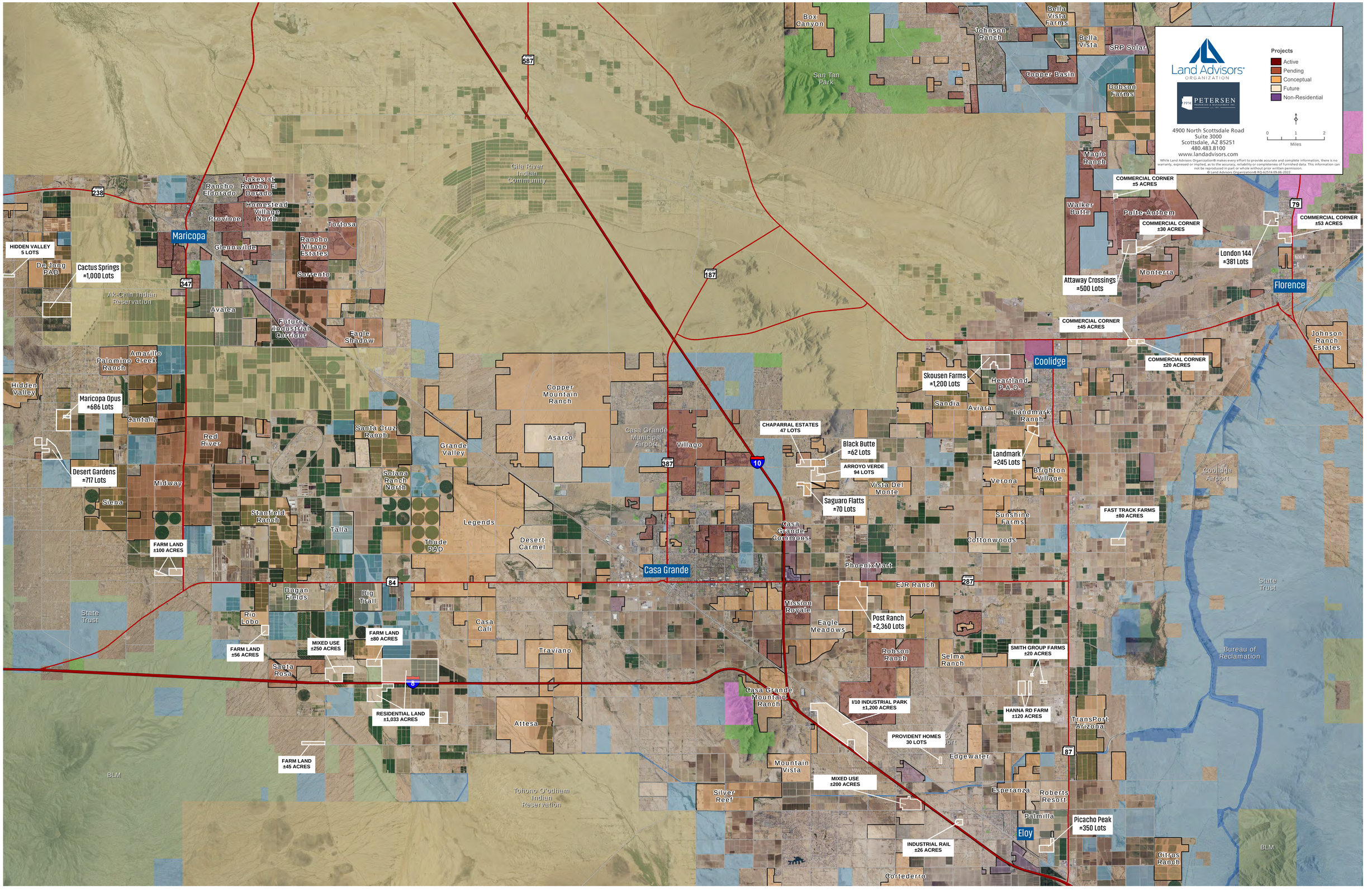
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PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Hidden Valley Rd 30, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

RE: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

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On behalf of **Hidden Valley Rd 30, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Hidden Valley Rd 30, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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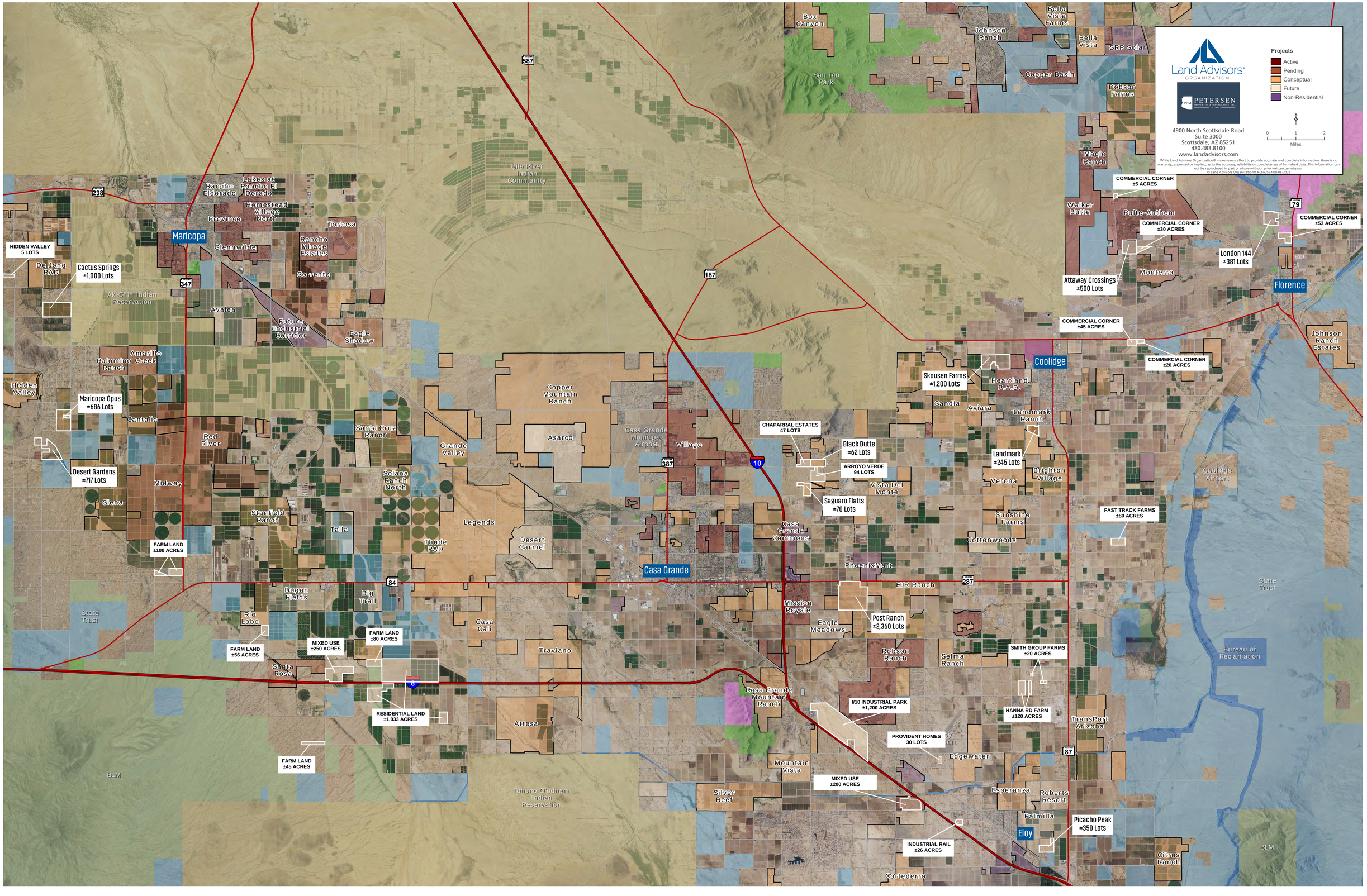
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HUNT EAST 30, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

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On behalf of **HUNT EAST 30, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
HUNT EAST 30, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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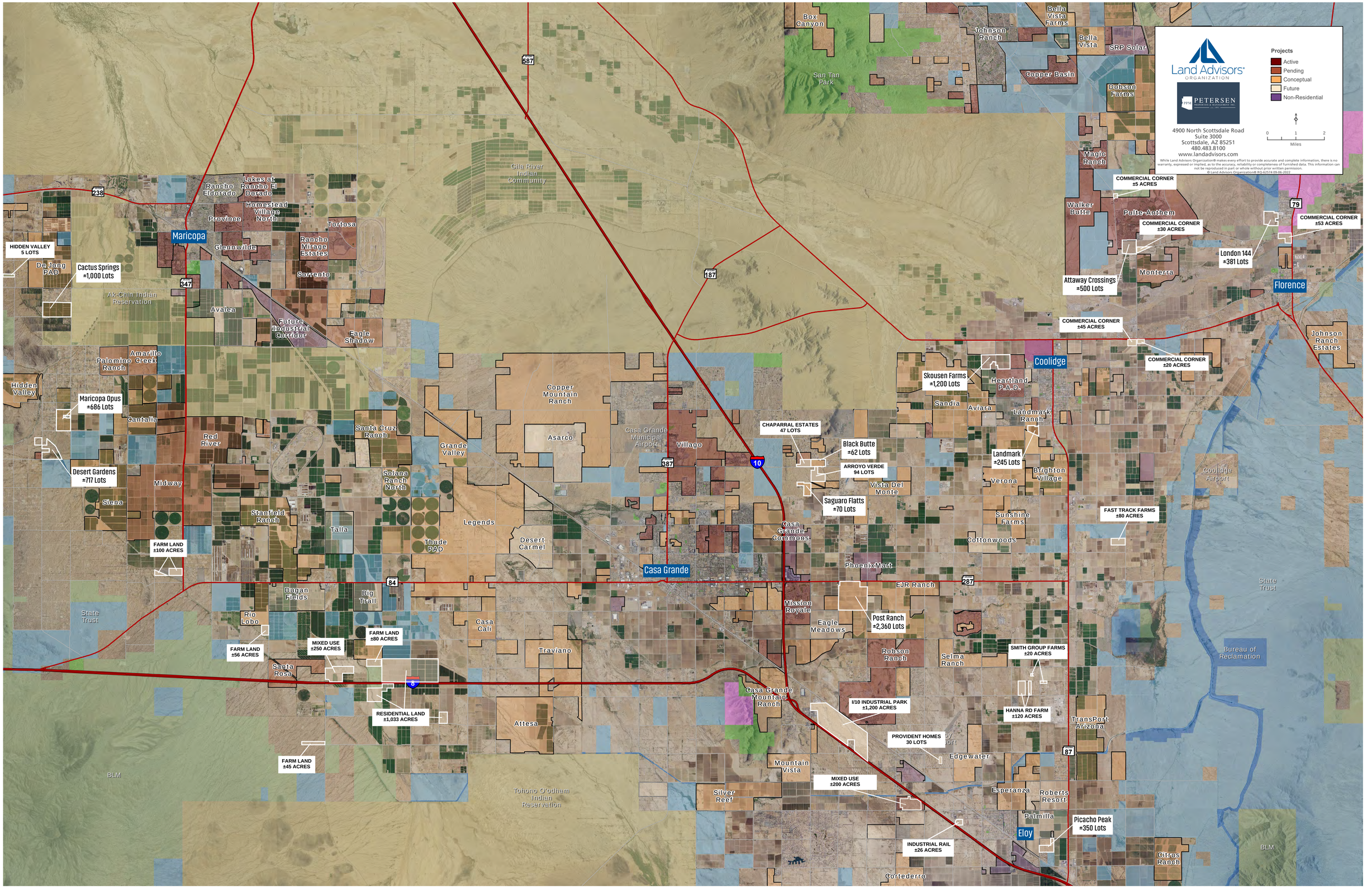
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Hunt Highway Commercial, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

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On behalf of **Hunt Highway Commercial, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Hunt Highway Commercial, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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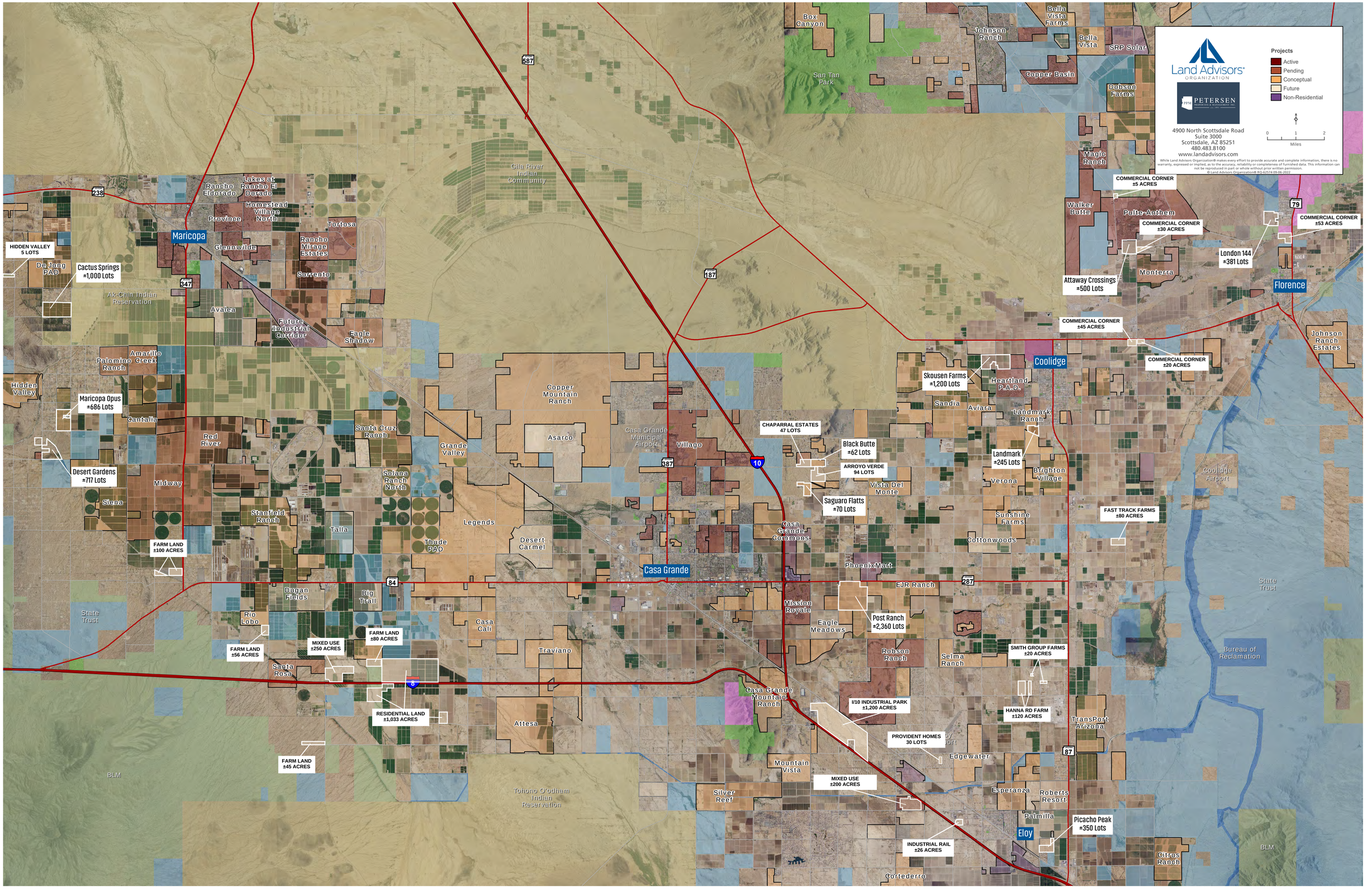
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PODIUM CLUB MEMBER

September 22, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Judy Purze

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

Kaz (KJ Fowler) <karenj_66@yahoo.com>
To: "\"docketsupervisor@azwater.gov\"" <docketsupervisor@azwater.gov>
Cc: "\"info@podiumclub.com\"" <info@podiumclub.com>

Sun, Sep 22, 2024 at 9:22 AM

22 Sept. 2024

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Sincerely,
Karen Fowler

PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Landmark 65, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

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On behalf of **Landmark 65, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Landmark 65, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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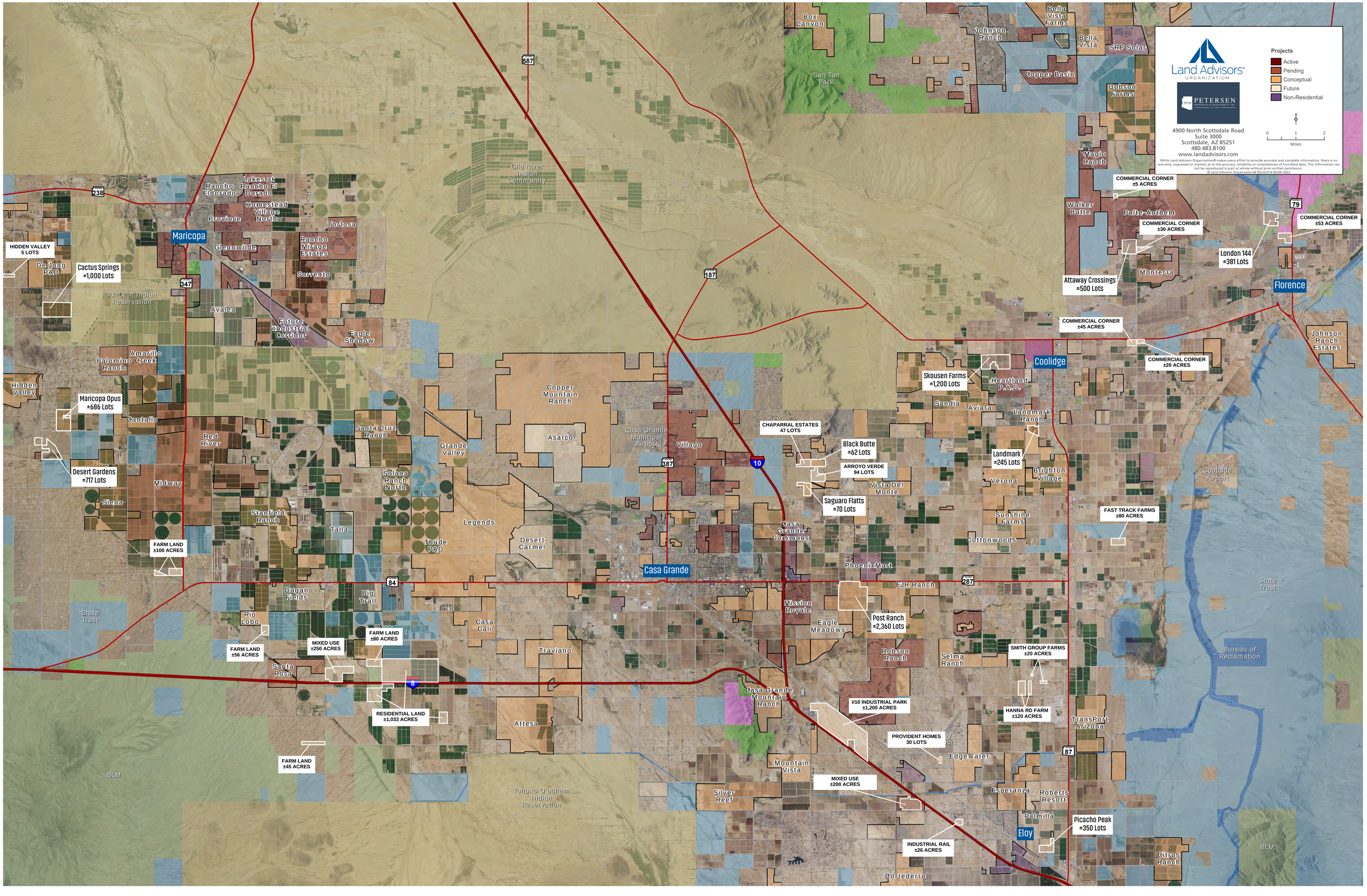
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State Trust
BLM

PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Maricopa Opus 226, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

RE: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury,

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On behalf of **Maricopa Opus 226, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Maricopa Opus 226, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

3369 E. Queen Creek Rd, Ste 101
Gilbert, AZ 85297
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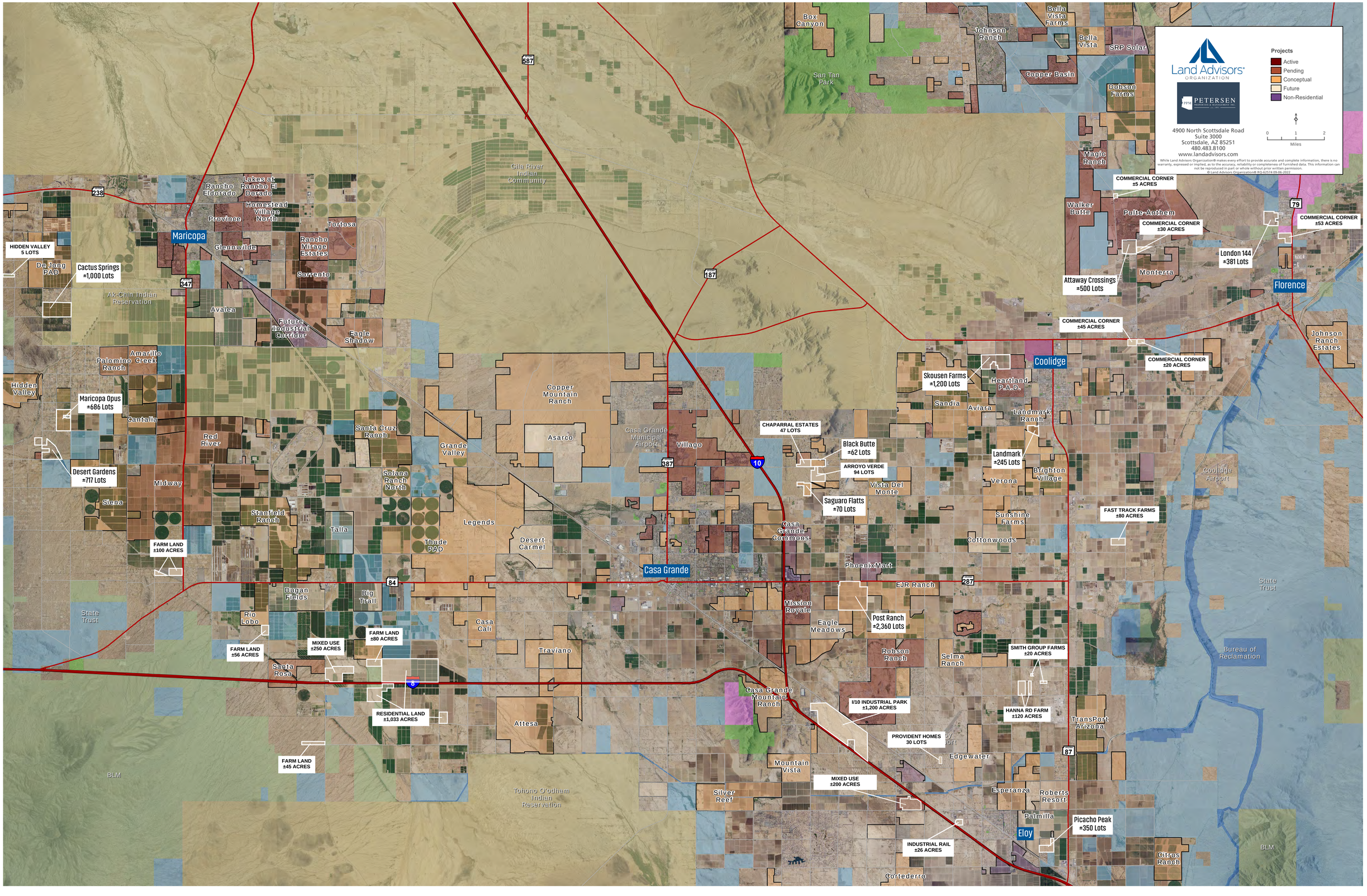
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Nuttall 89, LLC
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On behalf of **Nuttall 89, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Nuttall 89, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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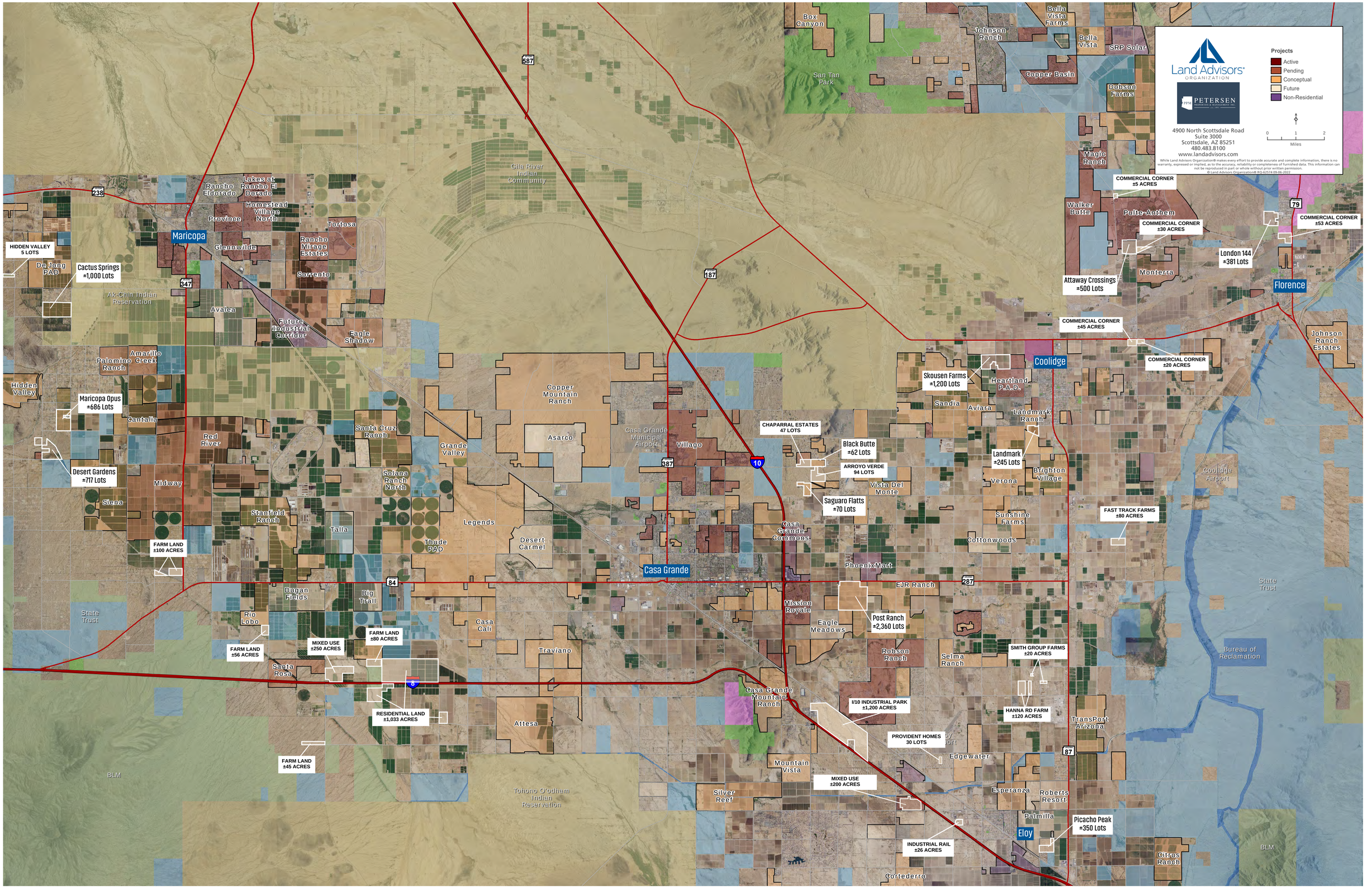
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Petersen Arizona Land & Entitlement Fund, LLC
9.22.24

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Docket Supervisor
Arizona Department of Water Resources
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Phoenix, AZ 85007

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On behalf of **Petersen Arizona Land & Entitlement Fund, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely

Tanner Petersen
Manager
Petersen Arizona Land & Entitlement Fund, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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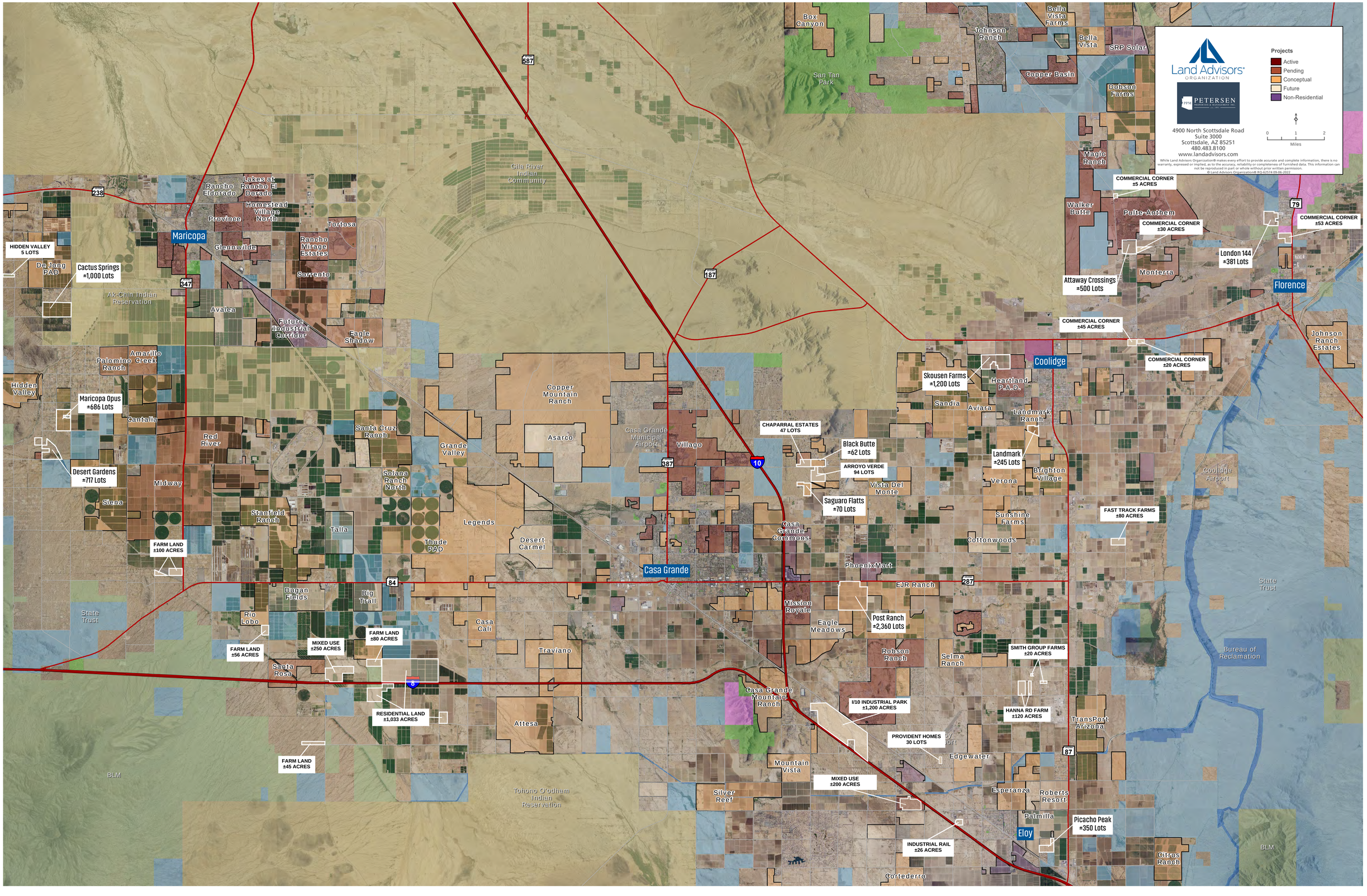
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Petersen Eloy 501, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

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On behalf of **Petersen Eloy 501, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Petersen Eloy 501, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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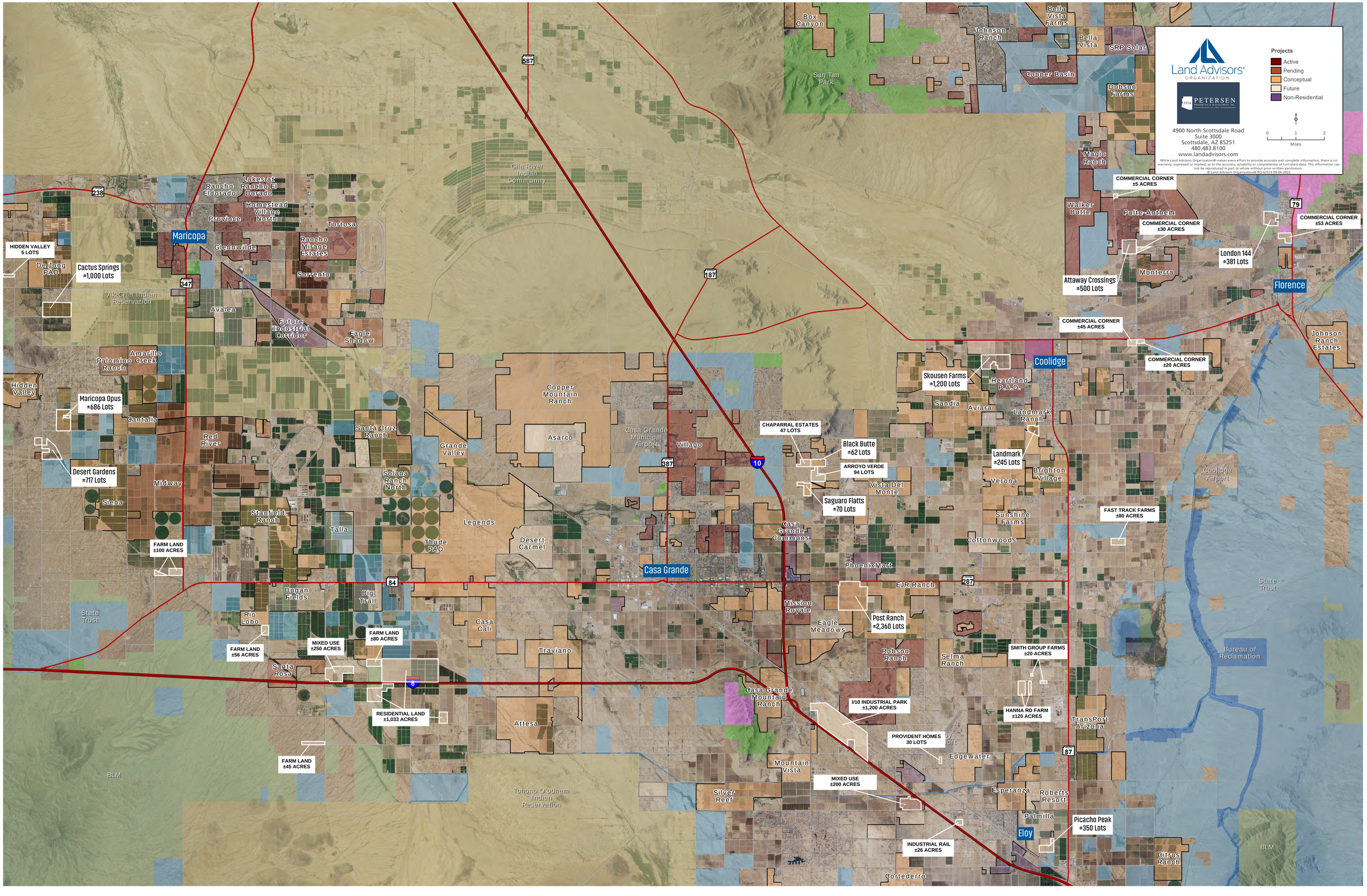
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Petersen Vekol Group, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

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On behalf of **Petersen Vekol Group, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Petersen Vekol Group, LLC

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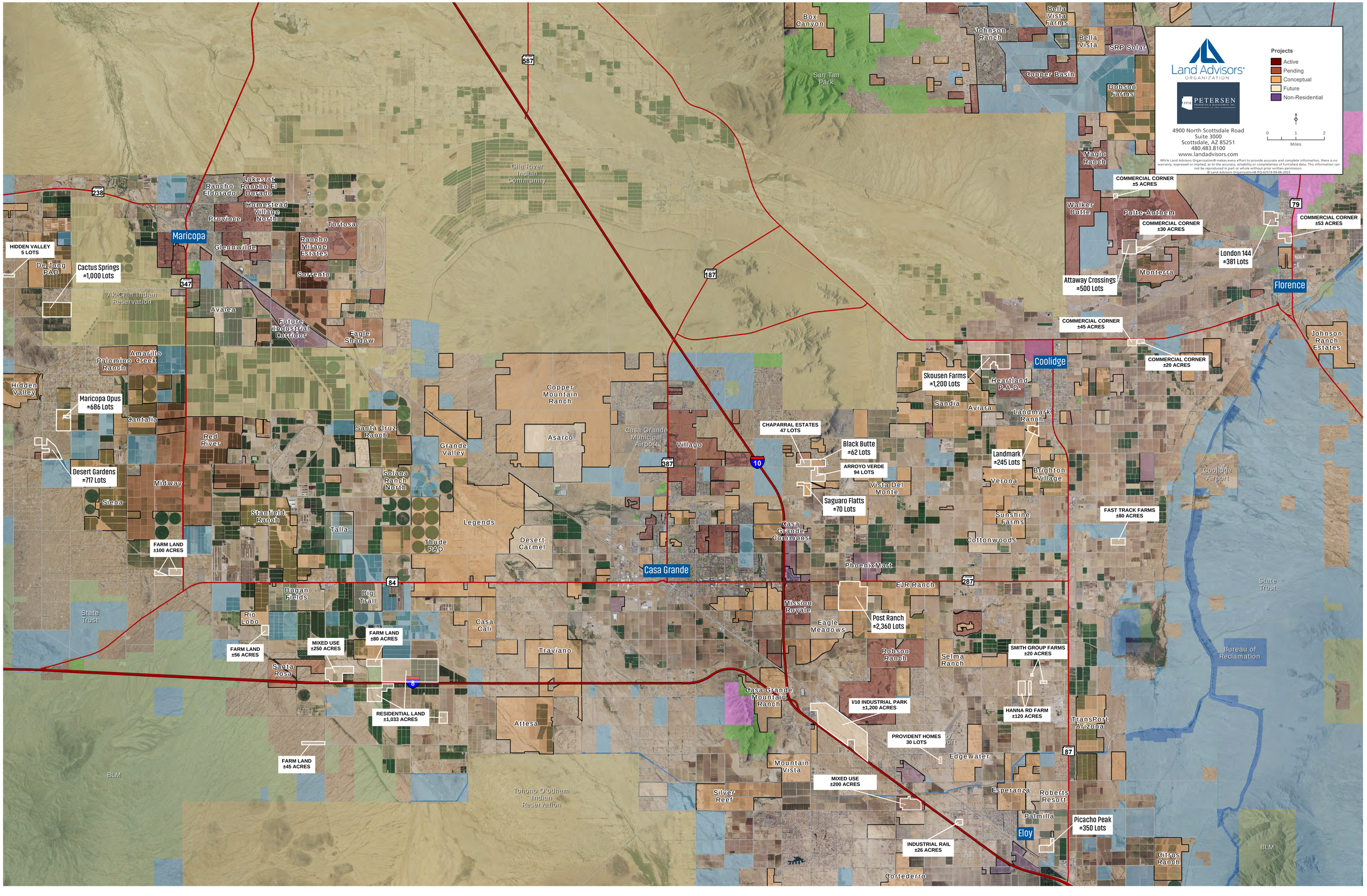
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Picacho Peak, LLC
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On behalf of **Picacho Peak, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Picacho Peak, LLC

(o) 480.545.2208
(c) 602.540.8151
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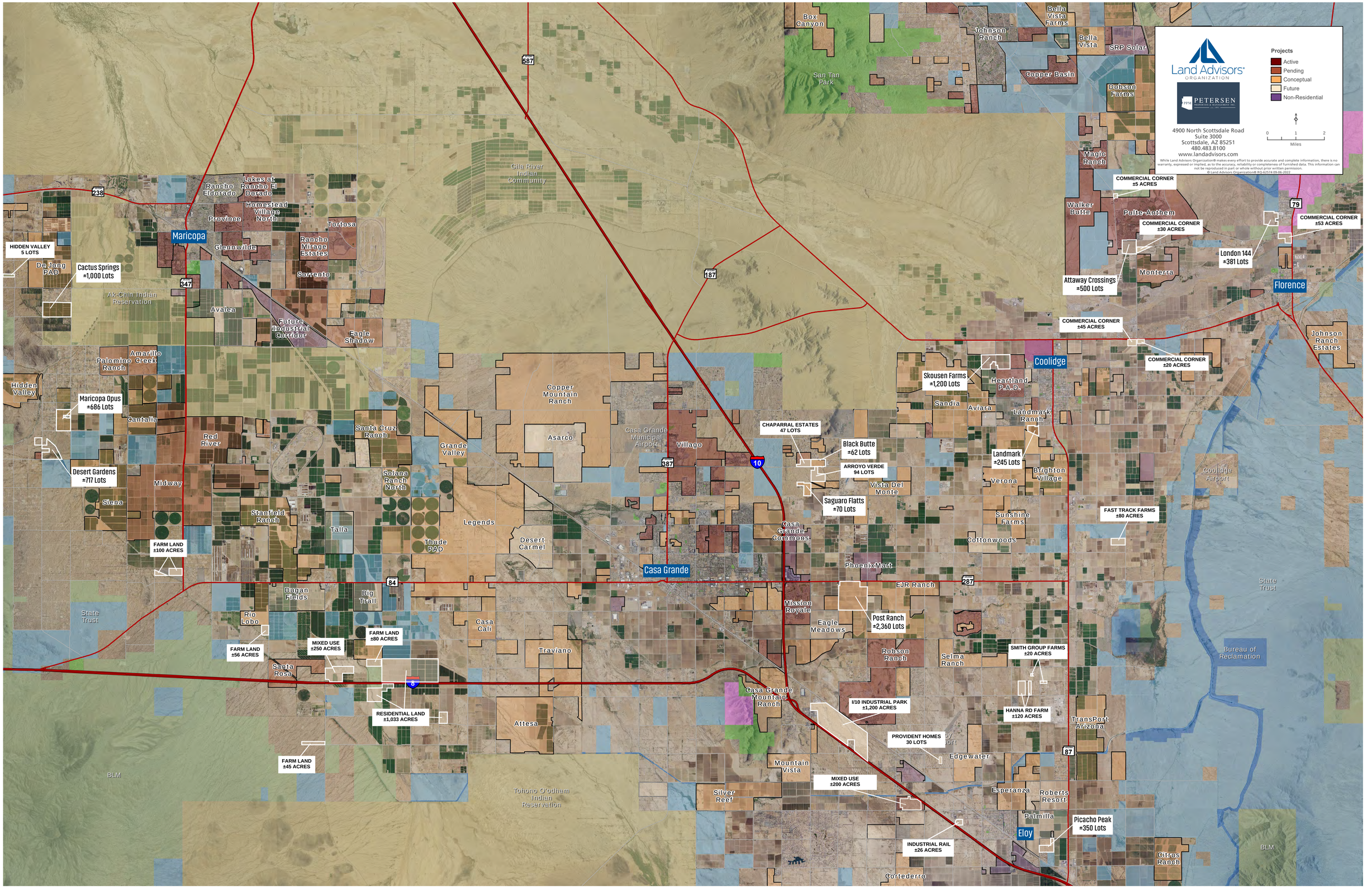
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Post Ranch 589, LLC
9.22.24

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On behalf of **Post Ranch 589, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Post Ranch 589, LLC

(o) 480.545.2208
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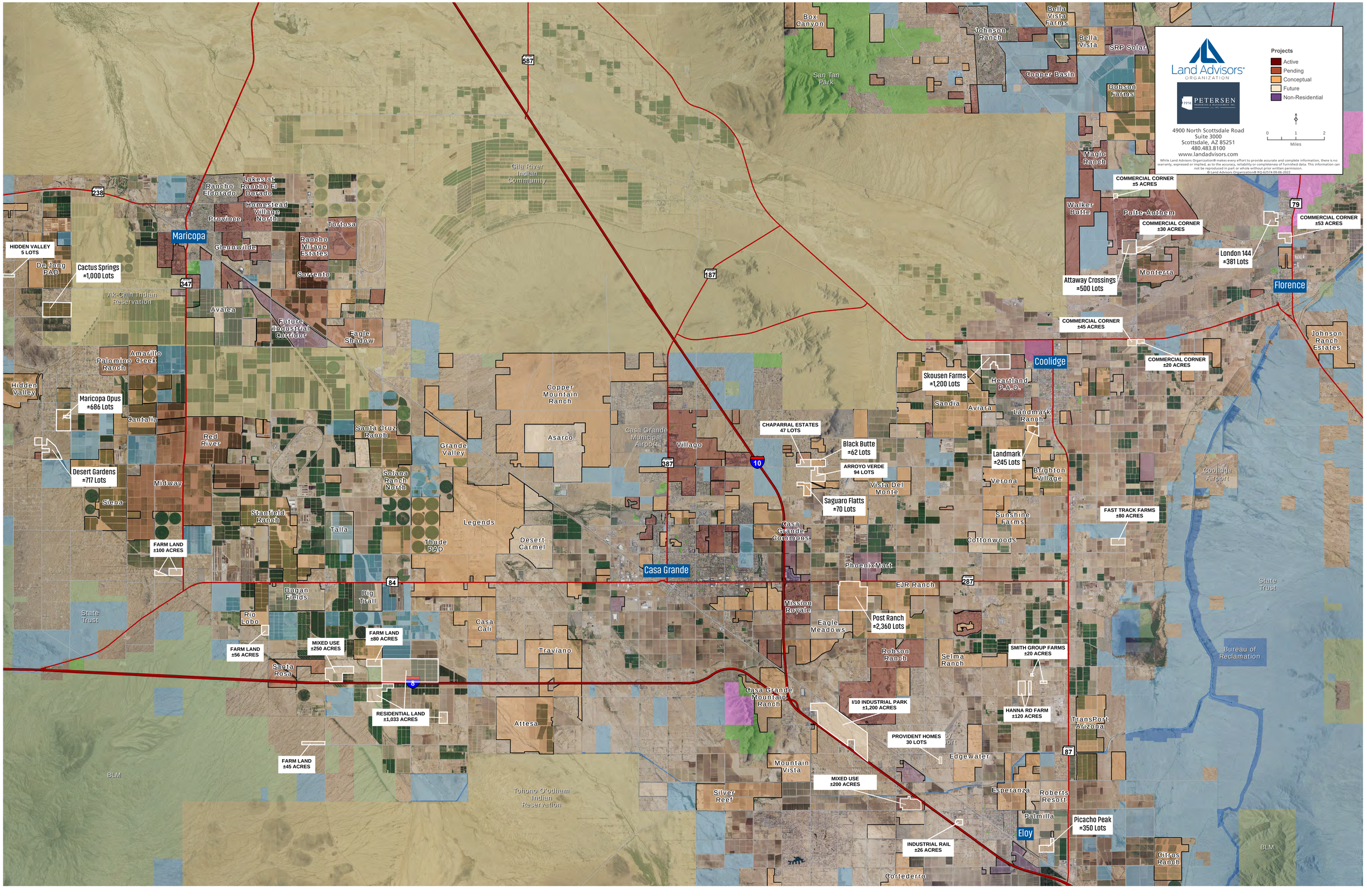
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Casa Grande Municipal Airport
Coolidge Airport
Bureau of Reclamation
State Trust
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Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

New Assured Water Supply Rules

1 message

Rob Wallschlaeger <robwallschlaeger@pricetransfer.com> Sun, Sep 22, 2024 at 8:06 PM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>

September 22, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande, its many Restaurants, Businesses and Hotels. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Rob Wallschlaeger

PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Skousen Farms LF, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

RE: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc, which manages properties in Pinal County, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of **Skousen Farms LF, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

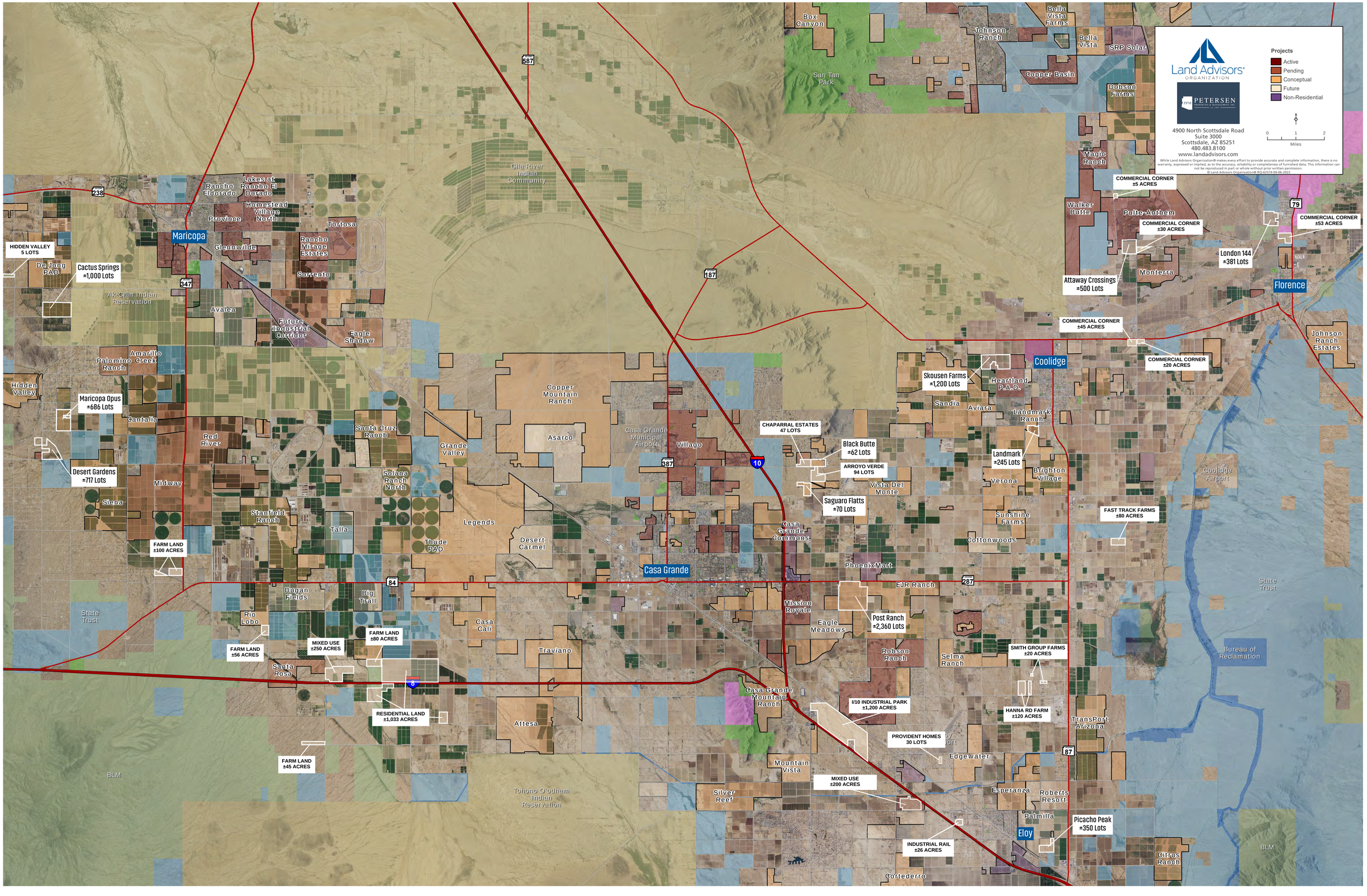
Sincerely,

Tanner Petersen
Manager
Skousen Farms LF, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

3369 E. Queen Creek Rd, Ste 101
Gilbert, AZ 85297
www.PPMLand.com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State Trust
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Smith Group 20, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

RE: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc, which manages properties in Pinal County, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of **Smith Group 20, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

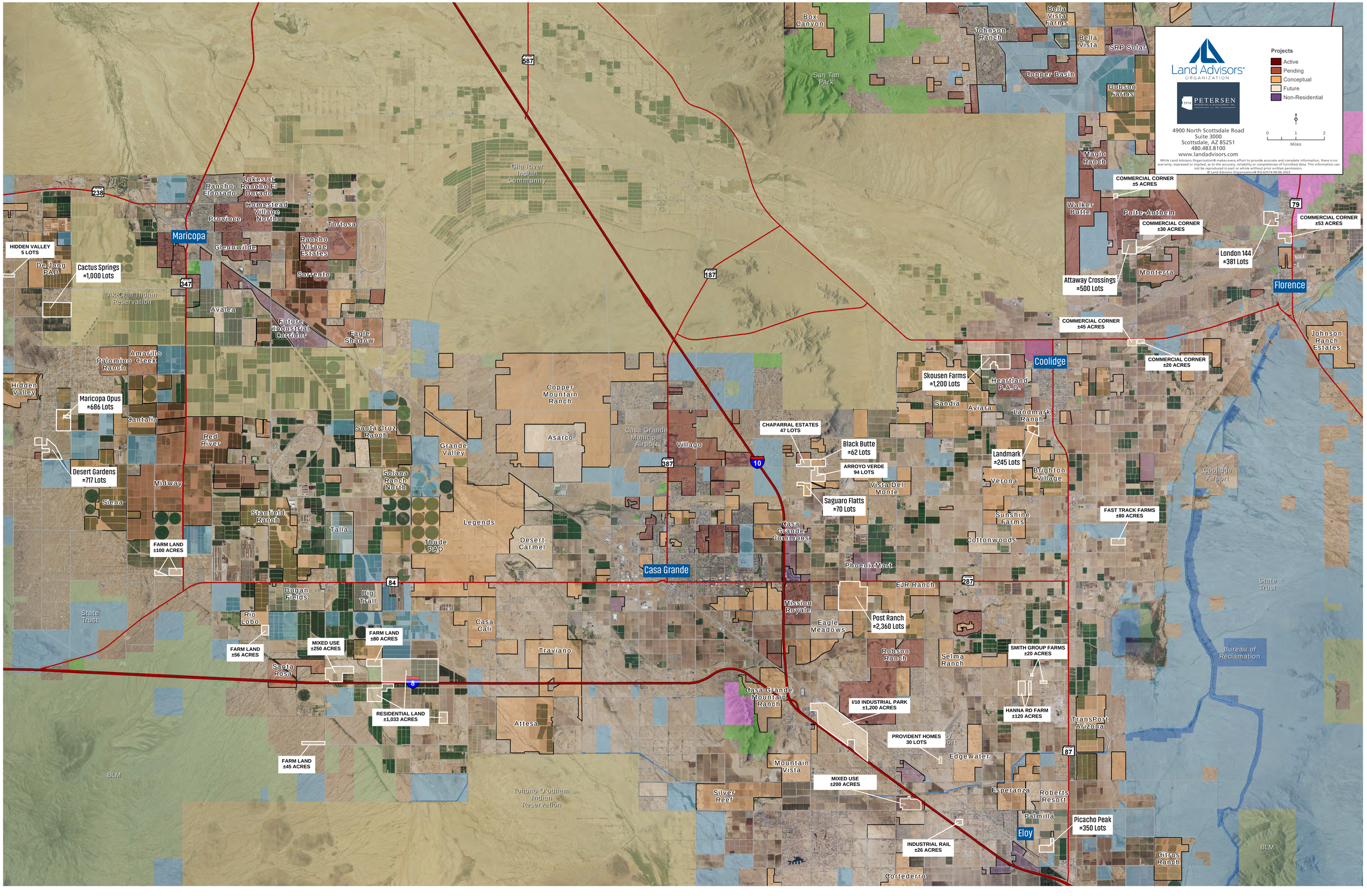
Sincerely,

Tanner Petersen
Manager
Smith Group 20, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

3369 E. Queen Creek Rd, Ste 101
Gilbert, AZ 85297
www.PPMLand.com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Vickie L Hayes 56, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

RE: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

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I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc, which manages properties in Pinal County, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of **Vickie L Hayes 56, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Vickie L Hayes 56, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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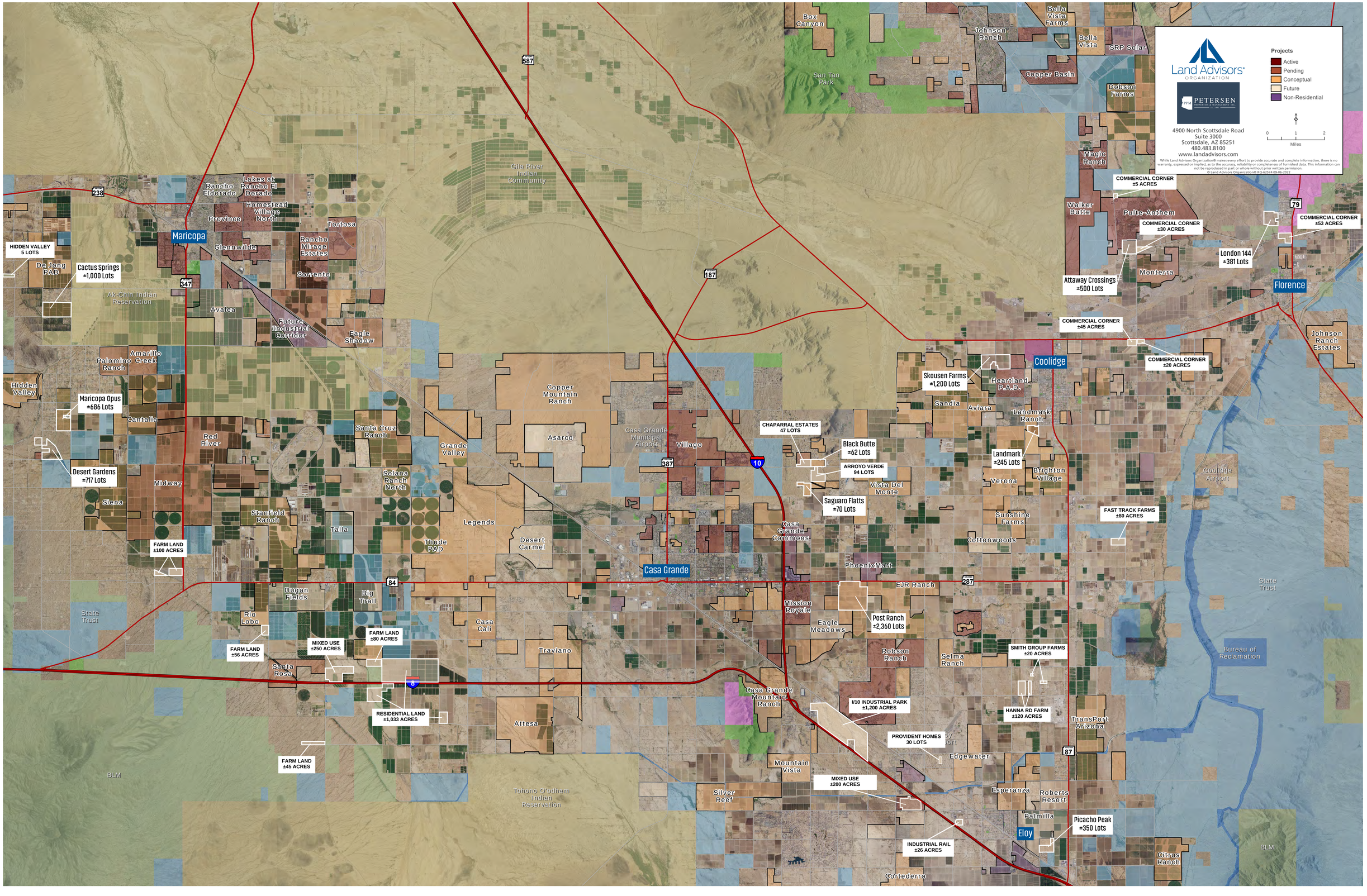
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Warren Rd 187, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

RE: Comments Pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc, which manages properties in Pinal County, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of **Warren Rd 187, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Warren Rd 187, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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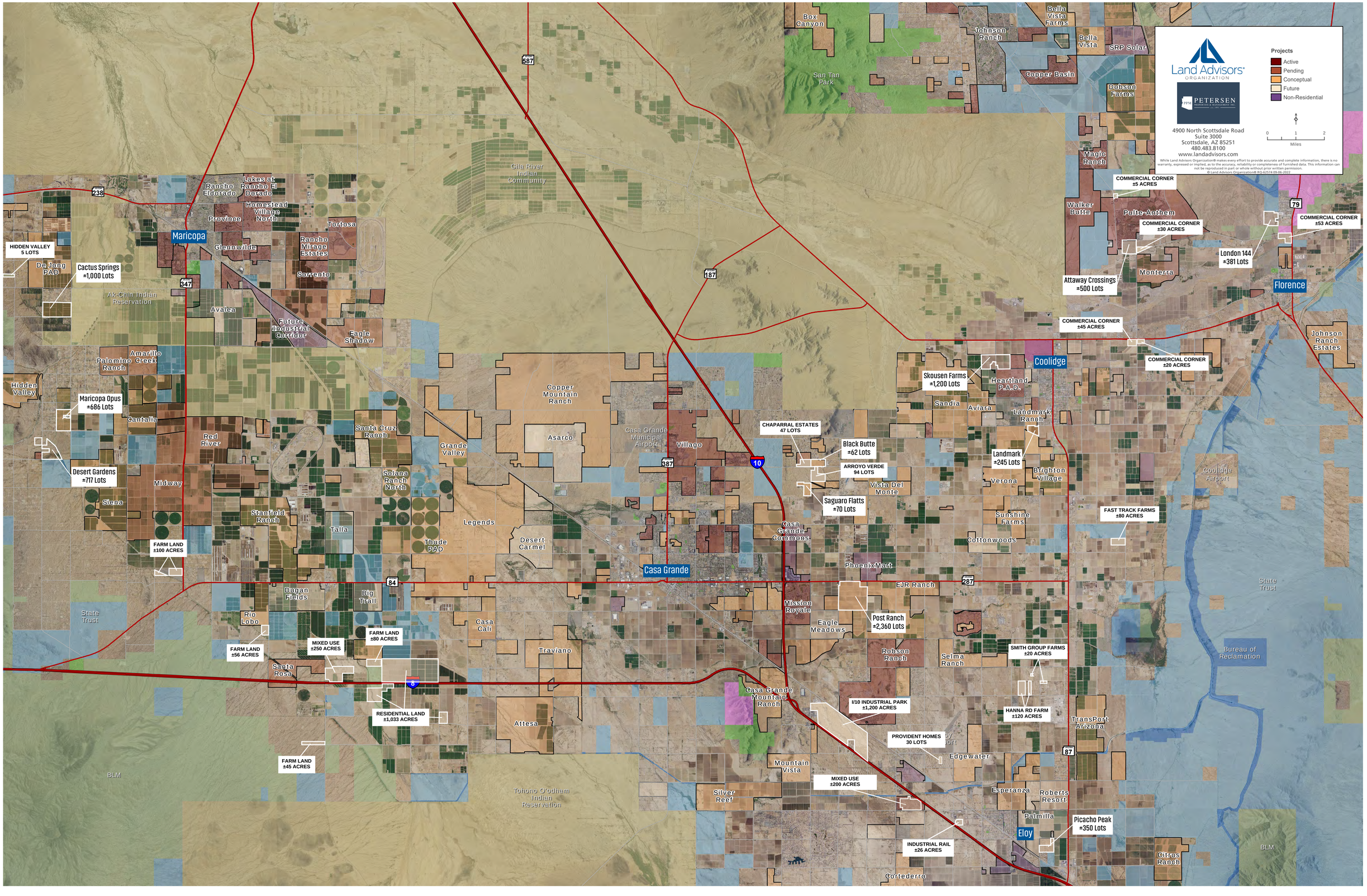
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Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Scot Dietz <scot@3blindmiceusa.com> Mon, Sep 23, 2024 at 11:35 AM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>

Ms. Scantlebury

Arizona Department of Water Resources

1110 W. Washington St.

Phoenix, AZ 85007

Dear Ms. Scantlebury,

I am writing to express my strong support for the new Assured Water Supply rules being proposed for Pinal County. Though I do not live in the area year-round, I own property in Pinal County and will soon be building and residing there part-time. The stability and management of water resources are critical, not only to property owners like myself but to the future economic and environmental health of the region.

I deeply appreciate the efforts from the Governor's Office and the Arizona Department of Water Resources in working to establish these new rules. A sustainable and reliable water supply is essential for protecting property values, fostering business growth, and enhancing the quality of life for the entire community.

Thank you for pushing forward with these critical changes. I fully support this effort and look forward to the positive impact it will bring to Pinal County.

Sincerely,

Scot Dietz

Owner

331 South Florence St

Casa Grande, AZ 85122

Have a Blessed Day,

Scot Dietz | Head Cheese / CEO
3 Blind Mice Window Coverings, Inc.

7960 Silverton Ave. •#127 •San Diego, CA 92126

Direct: 858-452-6102 Mobile: 619.846.1234

FAX: 858-452-6101 | WEB: 3blindmiceusa.com

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Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

Aaron Johnson <aaronino@gmail.com>
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

Mon, Sep 23, 2024 at 10:08 AM

Dear Ms. Scantlebury:

I am writing in support of your proposed new rules regarding an Assured Water Supply for Pinal County.

I am not a Pinal County resident, but a strong supporter of the Podium Club at Attesa. The inability to get a required water certificate has stalled development at Arizona's premier race circuit and motorsports club, including the construction and sale of trackside homes, race shops, condos, and more. This issue has postponed jobs, tourism and growth. It has halted track expansion and upgrades necessary to host major, nationally televised race events.

A water rule change will release the brakes and let them build. Pinal County and Casa Grande will benefit.

I strongly encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Aaron Johnson

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Adam Kennel <adam.kennel@gmail.com> Mon, Sep 23, 2024 at 12:48 PM
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

9/23/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,
Adam Kennel

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Alan Chook <alan@theapplexchange.com> Mon, Sep 23, 2024 at 11:06 AM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

September 23, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Alan Chook

Alan Chook
602-492-7575

The AppleXchange

alan@theapplexchange.com

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Assured Water Supply for Pinal County

1 message

Alan Jackson <alanjackson@centurylink.net> Mon, Sep 23, 2024 at 4:39 PM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

Dear Ms. Scantlebury:

I am writing in support of your proposed new rules regarding an Assured Water Supply for Pinal County.

I am not a Pinal County resident but a strong supporter of the Podium Club at Attesa. The inability to get a required water certificate has stalled development at Arizona's premier race circuit and motor sports club, including the construction and sale of trackside homes, race shops, condos and more. The issue has postponed jobs, tourism and growth. It has halted track experience and upgrades necessary to host major nationally televised race events.

A water rule change will release the brakes and let them build. Pinal County and Casa Grande will both benefit.

I strongly encourage the approval and adoption of the new rules as soon as possible

Sincerely
Alan Jackson
4805805045
Sent from my iPad

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Alvin Hamilton <alham1@aol.com> Mon, Sep 23, 2024 at 11:39 AM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: "info@podiumclub.com" <info@podiumclub.com>

Dear Ms. Scantlebury:

I support the new rules you are proposing for an Assured Water Supply for Pima County. I have visited the Podium club and believe the changes in the rules to allow them to continue development would benefit the city, county and state. I'm not a resident of the Pima county but liked what I saw while visiting the Podium Club site.

I hope you get the support needed to get these changes made so development can continue.

Sincerely,

Alvin Hamilton

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Comminling Rules Notice of Proposed Rulemaking

1 message

Amiee Maldonado <amieejoe@gmail.com>
Mon, Sep 23, 2024 at 8:46 AM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

September 23, 2024

Dear Ms. Scantlebury:

As a resident of Pinal County, please accept this letter as my direct support for the new Assured Water Supply rules for Pinal County.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working to develop these new rules, which will certainly go a long way in building a more vibrant economy.

We all know how a stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering overall economic health and a higher quality of life in our community.

Thank you for pushing this solution forward.

Sincerely,

Amy Maldonado

Pinal County Resident

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

UMS Tuning <info@umstuning.com> Mon, Sep 23, 2024 at 2:40 PM
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

09/22/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Anthony Szirka

Podium Club founding member.

ARIZONA WATER COMPANY

3805 N. Black Canyon Highway • Phoenix, Arizona 85015-9006

Fredrick K. Schneider
President and
Chief Operating Officer

Please Reply To:
P.O. Box 29006
Phoenix, AZ 85038-9006
(602) 240-6860

September 23, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

Re: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources ("ADWR") for working with stakeholders and directly with AWC, to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in both the Phoenix and Pinal AMAs.

AWC takes its responsibility to provide safe and reliable water service to its customers seriously. When AWC acquires new customers, it does so in consideration of its obligation to provide water service indefinitely to those customers. With such a commitment, AWC is also committed to managing the water resources for those customers strategically, sustainably, and for the long term. AWC's water resource management strategy is two-fold: (1) obtain and maintain a diverse water supply, and (2) promote the efficient use of those water supplies.

AWC believes the new ADAWS rules are aligned with AWC's stated responsibility and strategy. AWC also strives to develop and protect a diverse portfolio of water supplies and associated infrastructure that balances system redundancy with affordable water prices. We believe the new ADAWS rules address AWC's need to accomplish this additional objective specifically by allowing us to repurpose our CAP water and use it as a new alternative water supply and by allowing for the continued use of groundwater allowances associated with existing certificates of assured water supply and by providing, with appropriate limitations, the continued use of extinguishment credits. Without these specific provisions, it would not be possible for AWC to pursue a designation of assured water supply at all.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. These rules, for both the Phoenix and Pinal AMAs, are a very important step forward for AWC. If you have any questions, please do not hesitate to reach out to me, or to Terri Sue C. Rossi, my Vice-President – Water Resources.

Very truly yours,

Fredrick K. Schneider

tr

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Beth Hill <californiahills@sbcglobal.net> Mon, Sep 23, 2024 at 10:31 AM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>

Dear Ms. Scantlebury:

I am writing in support of your proposed new rules regarding an Assured Water Supply for Pinal County.

I am not a Pinal County resident, but a strong supporter of the Podium Club at Attesa. The inability to get a required water certificate has stalled development at Arizona's premier race circuit and motorsports club, including the construction and sale of trackside homes, race shops, condos, and more. This issue has postponed jobs, tourism and growth. It has halted track expansion and upgrades necessary to host major, nationally televised race events.

A water rule change will release the brakes and let them build. Pinal County and Casa Grande will benefit.

I strongly encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Beth Hill

09/23/24

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is because I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Bill McKusick

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments Pertaining to ADAWS & Commingling Rules Notice of Proposed Rulemaking

1 message

Bill Tybur <tyburbill@gmail.com> Mon, Sep 23, 2024 at 2:33 PM
To: docketsupervisor@azwater.gov

September 22, 2024

Dear Mr. Scantlebury,

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am an employee of the Podium Club at Attesa and a frequent visitor to Casa Grande. The Podium Club represents the first project at this unique master planned, multi-use community. It only needs the new water rules to begin development in earnest, which is especially important to all of us.

Our inability to get a required water certificate has stalled development on the construction and sale of trackside homes and condos, race shops, and industrial buildings. It has halted track expansion and the upgrades necessary to host major, nationally televised race events.

A rule change will release the brakes and let us build. Casa Grande, Pinal County, and the state of Arizona will all benefit from jobs, economic impact and growth.

I appreciate the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR). I encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Bill Tybur
bill@motorsportspromos.com
480-966-9711

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

BJ <invisibleecho@gmail.com>
Reply-To: invisibleecho@gmail.com
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

Mon, Sep 23, 2024 at 11:50 AM

09/23/24

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Bo Jung

September 23, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Brian Larrabure

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Cable <cable@cableandsara.com> Mon, Sep 23, 2024 at 11:41 AM
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>, Sara Rosenberg <Sara@cableandsara.com>

Sept 23rd 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Cable and Sara Rosenberg

CENTRAL ARIZONA PROJECT
P.O. Box 43020
Phoenix, Arizona 85080

September 23, 2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington Street, Suite 310
Phoenix, AZ 85007

Dear Ms. Scantlebury,

The Central Arizona Water Conservation District (CAWCD) which manages and operates the Central Arizona Groundwater Replenishment District (CAGRD), appreciates the opportunity to comment on the two rulemakings proposed by the Arizona Department of Water Resources (ADWR).

Since its inception in the mid-1990s, the CAGRD has assisted landowners, cities, towns, and private water providers located in its service area in complying with Arizona's Assured Water Supply (AWS) program. The CAGRD serves its members by replenishing the groundwater they pump in excess of the limits established by the AWS Rules. This groundwater replenishment is critical to ensuring central and southern Arizona's long-term groundwater management goals.

The CAGRD is committed to continuing its important replenishment role under the newly proposed amendments - the Alternative Path to Designation of Assured Water Supply (ADAWS) and the Commingling rulemaking for Certificates of Assured Water Supply (CAWS).

Under the rule amendments, the CAGRD could see a large number of current Member Lands (MLs) become incorporated into a new Member Service Area (MSA). This shift in CAGRD membership will have operational and financial implementation impacts that will need to be addressed. Some of these will require close coordination with ADWR and likely statutory changes to CAGRD's Annual Membership Dues calculations.

The CAGRD will also need to work closely with potential water providers considering this alternative path to a designation to determine a reasonable reliance on the CAGRD under our

PHYSICAL ADDRESS
23636 North 7th Street
Phoenix, Arizona 85024

CONTACT INFORMATION
info@cap-az.com
623-869-2333

WEB
CentralArizonaProject.com
KnowYourWaterNews.com

Member Service Area agreement. This reliance will take into consideration the water providers' existing water portfolio, their ADAWS groundwater allowance, and whether or not they will opt to temporarily keep their current MLs financially responsible for CAGRD replenishment under recently passed SB 1181.

In addition to these operational considerations, under the ADAWS proposal, the initial amount of groundwater that must be consistent with the Management Goal of the AMA increases, which could result in a greater replenishment obligation for the CAGRD. However, CAGRD has analyzed the anticipated impacts and determined that the combination of groundwater allowances, the alternative water supply requirements, and the observed reporting activities of existing MSAs will likely result in a reduction in future replenishment obligation compared to the replenishment obligation if the providers remained undesignated.

The CAGRD looks forward to continuing to work with the Governor's office, ADWR, and our stakeholders to ensure the State's long-term groundwater management goals are met as the AWS program evolves.

Sincerely,

Laura Grignano
CAGRD Manager

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

ADAW Program

1 message

nancy caywoodfarms.com <nancy@caywoodfarms.com> Mon, Sep 23, 2024 at 3:40 PM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>

Dear Supervisor Miller,

My name is Noah Hiscox. I have been a Coolidge, Arizona resident since 1969. I am a U of A graduate and taught algebra in Tucson from 1974 thru 1978 at which time I moved to Coolidge and began my farming career. I have farmed here since 1978. I currently farm approximately 3,000 acres here in Pinal county, am a farm land owner and I fully support the ADAWS program.

Thank you,
Noah Hiscox

Nancy Caywood
Caywood Farms
520-560-1119
www.caywoodfarms.com

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Chris Merrill <cdm1906@gmail.com>
Mon, Sep 23, 2024 at 12:37 PM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

Dear Ms. Scantlebury:

I am writing in support of your proposed new rules regarding an Assured Water Supply for Pinal County.

I am not a Pinal County resident, but I strongly support the Podium Club at Attesa. The inability to get a required water certificate has stalled development at Arizona's premier race circuit and motorsports club, including the construction and sale of trackside homes, race shops, condos, and more. This issue has postponed jobs, tourism, and growth. It has halted track expansion and upgrades necessary to host major, nationally televised race events.

A water rule change will release the brakes and let them build. Pinal County and Casa Grande will benefit.

I strongly encourage you to approve and adopt the new rules as soon as possible.

Sincerely,

Chris Merrill

cdm1906@gmail.com

Office of the City Manager

130 W. Central Avenue
Coolidge, Arizona 85128
(520) 723-5361
TDD: (520) 723-4653 / Fax: (520) 723-7910

September 22, 2024

Sharon Scantlebury,
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County, especially Coolidge.

Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible. Please let me know if you have any questions or need any further information.

Kind Regards

Gilbert Lopez, City Manager

Office of the Mayor
130 West Central Avenue
Coolidge, Arizona 85128
Phone: (520) 723-5361
TDD: (520) 723-4653 / Fax: (520) 723-7910

Jon Thompson, Mayor

September 22, 2024

Sharon Scantlebury,
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County, especially Coolidge.

Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible. Please let me know if you have any questions or need any further information.

Sincerely

Jon Thompson, Mayor

c. Gilbert Lopez, City Manager
Economic & Development Services Department

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Corey Meza <meza.corey40@gmail.com> Mon, Sep 23, 2024 at 4:11 PM
To: docketsupervisor@azwater.gov
Cc: "info@podiumclub.com" <info@podiumclub.com>

DATE 9/23/24

Dear Ms. Scantlebury:

As a resident of Pinal County, please accept this letter as my direct support for the new Assured Water Supply rules for Pinal County.
I appreciate all the efforts of the Governor's Office and thestaff at the Arizona Department of Water Resources (ADWR) for working to develop these new rules, which will certainly go a long way in building a more vibrant economy.
We all know how a stable water supply is crucial for maintaining strong property values, supporting businesses,and fostering overall economic health and a higher quality of life in our community.

Thank you for pushing this solution forward.
Sincerely,
Corey Meza

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Emma Kresser <Emma@emmakresser.com> Mon, Sep 23, 2024 at 10:08 AM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: "info@podiumclub.com" <info@podiumclub.com>

Dear Ms. Scantlebury:

I am writing in support of your proposed new rules regarding an Assured Water Supply for Pinal County.

I am not a Pinal County resident, but a strong supporter of the Podium Club at Attesa. The inability to get a required water certificate has stalled development at Arizona's premier race circuit and motorsports club, including the construction and sale of trackside homes, race shops, condos, and more. This issue has postponed jobs, tourism and growth. It has halted track expansion and upgrades necessary to host major, nationally televised race events.

A water rule change will release the brakes and let them build. Pinal County and Casa Grande will benefit.

I strongly encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Emma Kresser

Mission Viejo, CA

Gmail

Sharon Scantlebury <sscantlebury@azwater.gov>

ADAWS rule proposal -comment

1 message

Dunham, Doug <DDunham@epcor.com>
To: Sharon Scantlebury <sscantlebury@azwater.gov>
Cc: Nicole Klobas <ndklobas@azwater.gov>, Emily Petrick <epetrick@azwater.gov>

Mon, Sep 23, 2024 at 3:45 PM

Sharon Scantlebury, Docket Supervisor

Arizona Department of Water Resources

1110 West Washington Street, Suite 310

Phoenix, AZ 85007

Via Email

RE: ADAWS rule proposal

Dear Ms. Scantlebury-

I am writing on behalf of EPCOR Water Arizona. We are a private utility in Arizona with service areas across the state both inside and outside of Active Management Areas (AMAs). Collectively we serve over 368,000 fellow Arizonans. We have been actively involved in the development of the ADAWS from its inception at the Governors Water Policy Council through the development of the draft rules. EPCOR supports the proposed rules as they support sound water management and represent a positive move forward to encourage the use of renewable water supplies for growth in the Phoenix and Pinal AMA's.

Several language changes have occurred since the initial drafts of the rules were presented by the Department. The early presentations included examples of how the proposed ADAWS rule would function.

Those examples no longer match the current rule proposal as filed with the Secretary of State. EPCOR requests a clarification of the examples with the latest version as filed with the Secretary of State to ensure that a clear understanding of how the proposed groundwater availability reductions would function is available to stakeholders.

Thank you for the opportunity to comment and we look forward to your clarification.

Douglas W. Dunham

Director, Water Resources

EPCOR Water

2355 W. Pinnacle Peak Road, Suite 300

Phoenix, AZ 85027

O (623) 587-5203

F (623) 587-1044

C (480) 708-7642

epcor.com

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Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Erik Lilliebjerg <ELilliebjerg@nvidia.com> Mon, Sep 23, 2024 at 1:13 PM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: Erik Lilliebjerg <elilliebjerg@nvidia.com>, "info@podiumclub.com" <info@podiumclub.com>

PODIUM CLUB MEMBER

September 23, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor’s Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Erik Lilliebjerg

DATE – 9-22-2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

NAME

FRANK SCHROEDER

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Kyle Nelson <kyle@full-race.com> Mon, Sep 23, 2024 at 10:58 AM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

9/23/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is because I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Kyle Nelson

--
Kyle Nelson
Sales Manager
FULL RACE
Email *kyle@full-race.com*
Direct line *(520) 438-7085*

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Tom Sullivan <tom.sullivan@guildmortgage.net> Mon, Sep 23, 2024 at 3:46 PM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: "info@podiumclub.com" <info@podiumclub.com>

9/23/2024

Dear Ms. Scantlebury,

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident currently, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande for both personal and business. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is because I am interested in moving to a trackside home that I can own.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Tom Sullivan

Area Manager | NMLS #1337543

605 South Chandler Village Drive

Chandler, AZ 85226

O: 480.304.4210 | M: 703.282.2125

Company NMLS #3274 | Equal Housing Opportunity

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Guild mortgage

– 2023 –
President's Club

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HBACA

Home Builders Association of Central Arizona

September 23, 2024

Sent via Email

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007
docketsupervisor@azwater.gov

Re: Home Builders Association of Central Arizona Comments on Proposed Alternative Designation of Assured Water Supply Rules

Dear Ms. Scantlebury:

On behalf of the Home Builders Association of Central Arizona ("HBACA" or "Association") please accept the following comments on the Department's proposed rules related to the Alternative Designation of Assured Water Supply ("ADAWS") process. Notice of Proposed Rulemaking published in the Arizona Administrative Register on August 23, 2024, Volume 30, Issue 34. The HBACA is a trade association representing the residential construction and development industry. The Association acts as a source of timely and reliable information concerning the state of the local building industry and works to eliminate overly restrictive and costly building laws and regulations which drive up the cost of housing. Since 1951, the HBACA has served as the voice of the home building industry.

The release of the Pinal Active Management Area Groundwater Model in 2019 and the Phoenix Active Management Area Groundwater Model in June, 2023, and the moratorium imposed by Governor Hobbs on new determinations of assured water supply in the Phoenix metropolitan region, have adversely affected the residential for-sale housing industry disproportionately and unfairly. For the last nearly 30 years, for-sale residential housing, being developed on "subdivided land" as referenced in A.R.S. § 45-576, has been the most sustainable user of groundwater within the Active Management Areas. All homes built for sale have either been constructed in and served by a provider holding a designation of assured supply, or they have been issued Certificates of Assured Supply. In either case, for these three decades, for-sale residential housing's use of groundwater has been officially determined to be consistent with the achievement of the Phoenix and Pinal Active Management Area goals. In the Phoenix Active

Management Area, this has been primarily through 100% replenishment through the Central Arizona Groundwater Replenishment District ("CAGRD").

This is in sharp contrast to other groundwater uses in the Active Management Areas, most notably agricultural users, and those industrial (including multi-family for-rent housing) users in areas outside of the existing designated providers. These uses require no assured water supply, have no replenishment obligations, and are some of the largest consumers of groundwater. Yet the Phoenix groundwater model and the moratorium have had no effect or negative impact on these users. Instead, we have seen a boom in industrial development, build-for-rent housing, and commercial development based on minor land divisions.

All of this occurred during Arizona's nationally recognized housing supply and affordability crisis. Queen Creek, Buckeye, the west Phoenix areas served by EPCOR, and Pinal County are some of the fastest growing communities in the United States. However, subdivisions in these areas have been literally on hold since 2019 in Pinal County and as early as the summer of 2022 in most of the Phoenix Active Management Area, with no realistic end in sight. Investment in Arizona housing is delayed, infrastructure is stalled due to lack of a clear path to development, and housing prices are escalating rapidly due to the lack of supply. Homeownership is now a distant longing for many Arizonans. This is a matter that should be of deep concern to the administrative governance of the State of Arizona.

The solution to these water issues, thus far, has been to attempt to create a formula upon which the fastest growing, but undesignated water providers in the Phoenix and Pinal Active Management Areas might pursue an "alternative path" toward a designation of assured supply. To this end, the Arizona Department of Water Resources ("ADWR" or "Department") has drafted, circulated, and now formally submitted a proposed set of rules to create this alternative designation concept, commonly referred to as "ADAWS."

The HBACA supports the ADAWS concept for Queen Creek, Buckeye, and private utilities such as EPCOR and Arizona Water Company to become designated water providers. However, as the industry most impacted by these rules, we believe it is vital that the Department's rules are workable and fair. Additionally, the rules should be the least economically burdensome process for those providers and their constituent customers, particularly home builders and homeowners. Moreover, our home building industry must be allowed to continue to build and grow new planned communities to create a revenue base for those providers' acquisition of new water resources and the infrastructure necessary to produce, treat, and deliver those resources. The infrastructure costs funded by development impact fees to deliver water are already creating an impediment to new home construction, and a financially burdensome ADAWS will only compound this existing problem. This is not a home builder only problem. Without the infrastructure investment made by home builders, other land uses (i.e., commercial and industrial) will have nothing to tie into. Finally, we want to ensure that our members' projects that are currently on hold can immediately resume and begin to generate a return on the billions of dollars of stranded investment in those areas.

In these areas, we find the proposed rules fall short. The financial burdens of the ADAWS concept will once again fall unfairly and disproportionately on the home building industry, which is always at the front end of the water development requirements of any municipal water provider. There is no immediate or temporary relief for stalled subdivisions to resume large scale infrastructure projects necessary to achieve ultimate water service and, as importantly, sewer and wastewater treatment and storage facilities. The state imposed tax (variously called an "offset" or "premium") on new water supplies brought in by development cannot realistically be borne by the water provider, and will ultimately fall on the land developer and, in turn, on the eventual homeowner. There is no assurance that the program will be implemented quickly, and all indications are that the complexities of resolving an application for an ADAWS will take months if not years to complete.

Nor do we believe that the true economic impacts of the proposed ADAWS rules have been accurately considered, The Department has prepared, and posted on its website, an Economic, Small Business, and Consumer Impact Statement ("Impact Statement") that we have also reviewed. We asked Elliot D. Pollack & Company to review it as well and provide their experienced insight into the economic impact of these rules. They have prepared a memorandum summary of their findings, which we have attached to these comments for your consideration.

One area where the HBACA could see significant improvement in the proposed ADAWS concept is for the proposed tax on new alternative water supplies be directed to, and limited to, those sectors of the municipal service area that are responsible for the groundwater "mining" that the Department is trying to prevent. If the definition of "Alternative New Supply" were modified to require the provider to quantify the volume of water dedicated to non-subdivided land (which has heretofore not been contributing to mined groundwater) and reduce the provider's reduction of available groundwater only equivalent to that amount, much of the disproportionate hardship on developers of subdivided land would be removed. We have further discussed this improvement at the end of our analysis here.

With this background, we turn our attention to the specific issues we perceive in the proposed ADAWS rules.

<u>The Proposed Rule is Not an Option; It is a Licensing Requirement</u>

The preamble to the proposed rule strenuously attempts to depict the ADAWS as a mere option available to those municipal providers that may choose to pursue it. In fact, subdivided land development has been stalled in the fastest growing communities for the last two years in Maricopa County and five years in Pinal County. and every indication from the Department is that no new determination of assured water supply will be issued in the Phoenix or Pinal Active Management Areas unless the (currently undesignated) municipal provider complies with the ADAWS. While we recognize that the Department is contemplating another rule (the "commingling rule") that might allow some temporary relief, there are problems with that rule as well, which we address in a separate set of comments.

The reality is that the Department has done all in its power to make the ADAWS the only option to restart large scale residential development. As such, it is difficult to view the ADAWS as anything less than a mandatory requirement for residential growth in the currently undesignated provider municipal service areas.

The Proposed Rules are Grounded on a Faulty Groundwater Model Premise

A.R.S. § 41-1052(D)(8) requires that the preamble to the proposed rule disclose a reference to any study relied upon in the agency's justification for the rule. In the ADWR preamble, under Item 7, the Department lists "none" as the answer to this requirement. Nevertheless, the Department does reference both the "2019 Pinal model" and the "2023 Phoenix model" to establish the premise that there is currently no physically available groundwater to support a determination of an assured water supply in the Pinal or Phoenix Active Management Areas. These "models" are computer numeric studies that attempt to predict future water levels in the aquifers underlying these Active Management Areas. As noted in the preamble, the conclusion of these models, according to the Department, is that there are "unmet demands" within the model study area, and isolated areas where depth to water may exceed 1,000 feet (1,100 in Pinal) below land surface. Based on this premise, the Department concludes that the proposed alternative path to designation is justified because "Any costs associated with ADAWS are outweighed by the benefits when compared to the available alternatives." If one assumes that groundwater is not an alternative, then the "available alternatives" are few if any.

There are several problems with the reliance on these models to create the premise. First, the Department justifies lack of groundwater based on a notion of "unmet demand." These words do not appear in any statute or rule relating to the assured water supply program. It is a standard created wholly by the Department's interpretation and implementation of its rules, rather than the text of the rules, or the statutes. Furthermore, the calculation of an "unmet demand" is determined largely by placement of hypothetical wells by the Department in the future projections of the model domain. Landowners within the Hassayampa Sub-Basin of the Phoenix Active Management Area have engaged Matrix New World Engineering to do an in-depth analysis of the 2023 Phoenix Model. The results of that study have been submitted to the Department for review, and through that process, several adjustments have been made. But the final result of the Matrix model is that reasonable placement of wells within the model wholly eliminates the unmet demand cited by the Department across the entire municipal, assured water supply, and long-term storage credit recovery wells associated with the model domain.

Secondly, isolated depths to water across the entire Active Management Area may exist in some areas where rising terrain, impermeable underground deposits, and thin saturated aquifer zones contribute to lack of available groundwater at those specific locations. A.R.S. § 45-576, the statute which governs the foundation of the assured water supply program, does not require available groundwater in all areas. Rather, it focuses on "sufficient" groundwater that is "continuously available to satisfy the water needs of the proposed use." This is a site-specific determination that does not justify a conclusion that a depth to water issue in Apache Junction means that there is no physically available groundwater in central Buckeye. In fact, central

Buckeye is generally regarded as a "waterlogged" area where depth to water is exceedingly shallow—20-30 feet below land surface.

Thus, use of the 2019 Pinal model and the 2023 Phoenix model to justify the cost to benefit analysis of the rules creates an unrealistic, and statutorily unjustified restraint on the physical availability of groundwater that would support alternatives to the proposed rule. These alternatives would cost dramatically less to home builders and affected citizens than the proposed ADAWS alternative.

- The rule proposal is deficient on its face because it does not adequately disclose the nature of, and the extent of the impact of, the 2019 Pinal model and the 2023 Phoenix model as required by A.R.S. § 41-1052(D)(8).
- The Council should consider whether these models have been tested or subjected to peer review publications, such as the Matrix study. A.R.S. § 41-1052(G)(4). Particularly, inquiry should be made as to whether the assumptions underlying the Department's projection period of the model have been reviewed by anyone outside of the Department.
- The Council should consider whether the methodology and approach of these models are generally accepted in the scientific community, and particularly whether they are consistent with legislative intent or beyond the agency's statutory authority. A.R.S.§§ 41-1052(G)(6); 41-1052(D)(5); 45-576(M).

<u>The 25% Tax on New Alternative Supplies is Arbitrary</u>

The 2023 Phoenix model relied upon by ADWR to justify this rule, despite its faults as noted above, only projects a 4% deficit in available groundwater across the entire Phoenix Active Management Area model domain during the 100 year projection period. Only 2% of this projected shortfall is in the municipal/assured water supply/long-term storage credit recovery sector. Thus, for assured water supply purposes, this 2% shortfall is the "problem" sought to be reconciled by the proposed ADAWS concept.

Yet, under this proposed rule, the ADAWS applicant is first required to acquire or deploy a New Alternative Supply in order to qualify as an ADAWS applicant and, once acquired, the applicant is required to devote 25% of that new supply to a reduction in currently lawful groundwater use. This reduction is not tailored to any provider's actual use of groundwater or any relative contribution that provider or its customers may have made to any groundwater overdraft. Rather, it is an across the board requirement that seeks to force the ADAWS applicant to reduce its groundwater use by a factor of more than six times the projected shortfall in the entire Active Management Area.

No rationale, study, calculation, or empirical data is provided by the Department to support or justify the 25% tax on the New Alternative Supply. It is barely even mentioned in the preamble to the rule and is treated as if it were a benefit to the provider to "facilitate a transition away from groundwater."

As a simple proposition, requiring a few municipal water providers to bear a 25% groundwater tax on newly acquired or deployed non-groundwater resources to cure a 2% (or at most 4%) deficit largely created by others cannot be an "alternative that imposes the least burden and cost to persons regulated by the rule." A.R.S. § 41-1052(D)(3).

- No empirical evidence is offered by the Department to justify the 25% tax on a New Alternative Supply, making it an arbitrary percentage without rational basis on a cost/benefit analysis.

The 25% Tax on New Alternative Supplies is an Unreasonable Extraction

Similar to the arbitrary nature under which the 25% groundwater tax is imposed, the 25% tax on new supplies is a quasi-legislative exaction that exceeds the need to prove physically available groundwater under the assured water supply statute (A.R.S. § 45-576) and under a straightforward and reasonable interpretation of the assured water supply rules. If the modeling results show a 2% shortfall in the municipal/assured water supply groundwater (a determination that may still be subject to challenge), the exaction of a 25% reduction in groundwater available to the A-DAWS provider does not have a sufficient nexus to home building, exceeds home builders' proportionate impact on groundwater, and is contrary to the ruling in *Sheetz v. El Dorado County, California*, No. 22-1074, 601 U.S. ____ (April 12, 2024).

In both the preamble to the rules and in the Impact Statement, the Department characterizes the ADAWS concept as an "additional voluntary option[s]" to the existing rules that "create no new requirements." The Impact Statement goes on to state that "specific costs, benefits and impacts of this rulemaking were assess[ed] against these two alternatives—pursuing a determination of AWS [assured water supply] under the existing rules or not pursuing a determination." This analysis overlooks the fact that it is essentially impossible, at least in the most affected communities, to "pursue a determination of AWS under the existing rules." The ADAWS is not a voluntary option—it is the only option available to obtain new determinations of assured water supply in non-designated service areas or not to obtain a determination at all. When viewed realistically, the components of the ADAWS, particularly the 25% tax, is a mandated extraction to be able to continue development of subdivided land.

- The 25% tax on a New Alternative Supply is a government extraction on new development of subdivided land that is disproportionate to the need and not reasonably related to the problem, making it illegal under existing law and therefore not in compliance with A.R.S. § 41-1052(D)(3).

The 25% Tax on New Alternative Supplies will Directly Affect Home Builders

The preamble to the proposed rule and the Impact Statement build on the Department's characterization that any cost associated with compliance with the new rules will be borne by the water provider. For example, the Impact Statement (page 8) suggests that all costs will be borne by municipal provider ratepayers but "How these costs are distributed among the ratepayers is determined by the utility through ratemaking processes, which are specific to the provider and the community." As far as the cost impact to developers, the Impact Statement goes on (page

14) to state that the "water provider will decide how water supply costs are passed through to a developer. Compared to the traditional rules or no designation, these alternatives could allow for additional development."

- This is a rather naïve or intentionally misdirected view of the how the costs will actually be borne. It is common knowledge, certainly among experts in the water field, that utility service start-up costs for new development (water resource acquisition, infrastructure, regulatory compliance) are borne by the developer. In the case of ADAWS, a 25% tax on new supplies sufficient to allow development will be a cost to be passed on to developers, with the "understanding" that these costs are mandated by state law, not municipal provider regulation, and are therefore simply a cost of doing business. To assert that the economic cost of ADAWS will have no effect on small businesses, such as small home building concerns, is not justifiable (Impact Statement at page 13—Costs to Small Businesses—"None Identified"). From the HBACA perspective, as vetted with our constituent members over the course of many discussions, the cost of a New Alternative Supply, including the 25% tax, will be borne by the landowner/developer/homebuilder. The Department designed this tax to force water providers to reduce groundwater use. Yet, it is being imposed on the one industry that does not mine groundwater, does not contribute materially to any groundwater deficit, and does not receive any benefit over the traditional assured water supply program in place until the groundwater moratoriums became effective. The Impact Statement thus does not accurately reflect the true costs of the proposed rule and does not accurately reflect who will bear those costs, making it not generally accurate as required by A.R.S. § 41-1052(D)(2).
- The cost/benefit analysis does not address the inequity of imposing financial burdens on the homebuilding industry and makes no effort to select alternatives that impose the least burden on this particular industry that will be highly regulated by the rule.

<u>The 25% Tax Is Compounded by the Need to "Gross Up" the Alternative Supply</u>

Because the Department's characterization of the economic burden of the 25% tax falling solely on the water provider, it also overlooks the side of the equation that is concerned with meeting a specific quantity of water demand. For example, if a development needs 100 acre feet of water per year to satisfy the projected demand, and the developer is required to cover that demand, the developer must bring 100 acre feet net to the provider. If the developer attempts to bring 125 acre feet to meet the demand plus the 25% tax, the developer will still come up short. This is because the tax is imposed on the total quantity of the new supply. Proposed Rule A.A.C. R12-15-710 (H)(2) and (I)(2). If the New Alternative Supply Volume is 125 acre feet, the rule instructs that the 25% of the new volume shall be multiplied by 100 then subtracted from the provider's existing groundwater supply. Thus, the 25% of the 125 acre feet (31.25 acre feet) is the basis of the deduction. Translated back to the projected annual demand, this leaves only 93.75 acre feet to service the new development.

This calculation is familiar to anyone attempting to contemplate what gross amount is required to yield a desired net benefit, It is often referred to as a "gross up" calculation derived from the standard formula:

$$\text{Gross amount needed to offset new subdivision demand} = \frac{\text{Net amount homebuilder would have to convey to provider}}{1 - \text{25 percent "tax" on New Alternative Water Supply}}$$

$$\text{Gross amount needed to offset new subdivision demand} = \frac{100\ \text{AF/yr}}{1 - .25}$$

$$\text{Gross amount needed to offset new subdivision demand} = 133.33\ \text{AF/yr}$$

To the extent that any developer is required to cover the projected demand of a new development, it will be based on the net amount required to service that development. The acquired supply will have to be "grossed up" to yield the desired net. The tax to the developer is thus 33.33%, not 25%.

- The Rule package does not accurately calculate the true cost of the 25% tax because it fails to recognize the need to achieve a specific net increase in available water in order to provide sufficient resources for planned development.

<u>The 25% Tax on is Further Compounded on Effluent</u>

The definition of New Alternative Supply does, and is apparently intended to, cover the recycled and reclaimed water of effluent. As development occurs, new sewer collection and treatment systems are built. The reclaimed water (effluent) is generally recharged into the aquifer and later recovered, either on an annual or long-term basis. To be included within a designation, including ADAWS, the provider collecting, treating and eventually using the effluent must show that it is reliable under the terms of the assured water supply program. In years past, this effluent was considered a resource for new growth and, in many cases, the effluent created by large master planned communities was dedicated to the continued and ongoing development of those communities.

Under the ADAWS program, new growth will be required to bring 133.33% of its projected demand to the municipal provider to obtain a commitment of water service. The effluent generated by the development, if used for an addition to the ADAWS, will again be subject to a 25% tax to further reduce groundwater use within the provider's service area. This means that the water resource brought to the service area as a new supply will be taxed twice, and beyond, as each new iteration of effluent becomes subject to the tax.

Furthermore, the significant infrastructure required to collect, treat, and utilize effluent will also be subject to the 25% tax, as it will be producing a water supply that will be used to replace an existing supply that requires much less infrastructure. The Impact Statement, and the proposed rule package as a whole, does not consider or address this lost cost, most of which will be passed on to the homebuilding industry as the homebuilding industry is generally required to design, engineer, and construct this infrastructure as part of the cost of obtaining municipal water service.

Again, if the quantity of effluent is being used for new growth, and a specific quantity is needed to meet a proposed new growth demand, the "gross-up" calculation again applies, meaning that the provider must in fact dedicate 133.33% of the effluent to offsetting groundwater if it is to meet a net 100% volume for new growth.

- The Impact Statement does not accurately reflect the true costs of the proposed rule as it relates to infrastructure required to collect, treat, and utilize effluent and does not accurately reflect who will bear those costs, making it not generally accurate as required by A.R.S. § 41-1052(D)(2).

<u>The Proposed Rule Exceeds the Statutory Authority of the Assured Water Supply Program</u>

As frequently stated in the rule preamble and the Impact Statement, the principal goal of the assured water supply program is to provide consumer protection to those who choose to purchase homes in Arizona. Its fundamental purpose is to review whether or not a water supply for a development based on subdivided land will be secure for the next 100 years. The statutory guidance of A.R.S. § 45-576(M) is clear: "For the purposes of this section, "assured water supply" means ... Sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years." This is a directive to ensure that the needs of the proposed use will be available, not a legislative directive to require, incentivize, or prohibit the use of any one particular water resource.

The HBACA understands that the protection of Arizona's aquifers is a legitimate state concern and that unbridled use of groundwater will lead to depletion of the groundwater resource. But the proposed rule attempts to use the assured water supply program to correct some shortcomings of the 1980 Groundwater Management Act on the back of certain uniquely identified water users, namely developers of subdivided land—which is basically synonymous with the development of for-sale residential housing. The homebuilding industry has been subject to the most stringent requirements of protecting the aquifers of the Phoenix and Pinal Active

Management Areas since the adoption of the assured water supply rules in 1995. Each subdivided development has been required to show, and do its part, to eliminate the use of mined groundwater within these Active Management Areas, either through the use of credits accrued from retirement of agricultural land or through active, and costly, groundwater replenishment.

The proposed rule seeks to impose yet an additional burden on the development of subdivided land by requiring the reduction in heretofore legal use of groundwater by only those municipal providers that do not currently have a designation of assured water supply. Furthermore, no distinction is drawn between water use sectors that are contributing to the use of "mined" groundwater and those, like for-sale residential housing, that are not. Rather, the clear impact of the rule package as a whole is to place the financial burden of reducing the unreplenished use of groundwater on the very sector of the economy that is not the source of the problem. The justification of the entire rule hinges on the benefits that the state as a whole might realize from enhanced groundwater restrictions, while ignoring the fact that the cost burden will fall largely on the homebuilding industry.

The assured water supply program is a vital part of the State's water management and a program that is vigorously supported by the homebuilding industry, but this program has its limits. By first creating an absolute prohibition on the legitimate use of groundwater, then proposing an "alternative option" to a moratorium on new subdivided land development, the cost of which will be borne largely by the homebuilding industry, the Department seeks to balance the groundwater budget by taxing those who are least responsible for the imbalance.

- The proposed ADAWS Rule is inconsistent with the intent of A.R.S. § 45-576 and beyond the agency's statutory authority, and thus not subject to approval under A.R.S. § 41-1052(D)(5).
- The proposed ADAWS Rule is made under a specific grant of authority but exceeds the subject matter areas listed in A.R.S. § 45-576, thus not complying with A.R.S § 41-1030(D)(1).

<u>Suggested Modifications to the Proposed Rule to Place the Burden Where it Belongs</u>

The HBACA recognizes that designations of assured water supply can be an excellent water management program for the Active Management Areas. To that end, we support a program that would provide an opportunity to overcome the current moratoriums in the Pinal and Phoenix Active Management Areas. We believe, however, that the proposed ADAWS rule takes an unsophisticated broadside approach to a complex problem of assigning the relative burden of the problem sought to be solved. We believe this could be largely mitigated if the rules were refined to accomplish the following:

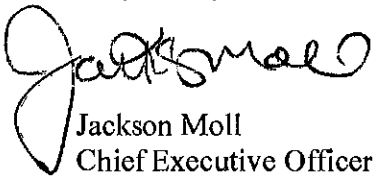
- The mandatory reduction of the provider's current groundwater portfolio should be in direct proportion to the provider's current unreplenished groundwater use, rather than a one size fits all 25% tax on every provider.

- The cost of the reduction in current groundwater use should be targeted at those users within the provider's service area that have (heretofore and before the ADAWS is issued) been using groundwater without a replenishment obligation. This can be accomplished by creating a mechanism in the rule to determine the annual (translated to 100 year as appropriate) volume of this unreplenished use, then requiring the provider to offset that use by a percentage each year. This would tie the tax on new alternative supplies directly to offset groundwater mining and allow the provider justification for imposing that tax on industries other than the homebuilding industry.
- The mandatory reduction should have a limit. Once a provider becomes designated, and has reduced its groundwater consumption by the volume represented by heretofore unreplenished groundwater use, the tax should terminate.
- The tax should not be applied to effluent, which is an efficiency use of the water in the new alternative supply. Once taxed, that new supply should not be taxed again. A refinement may be to assign the tax to the relative percentage of heretofore unreplenished groundwater use within the provider's service area to again tie the tax to the mining problem sought to be solved.

These refinements do not address some of the underlying problems with the ADAWS approach, as discussed above, but they would make the program more palatable to the homebuilding industry, which is the major sector affected by the proposed ADAWS rule.

While the HBACA cannot support the ADAWS rules as proposed, we can work with the Department to make changes that would resolve the unfairness of the impact to our industry.

Very truly yours,



Jackson Moll
Chief Executive Officer
Home Builders Association of Central Arizona

September 20, 2024

Ms. Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, Arizona 85007

Re: ADWR A.R.S. § 41-1055(B) ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT Review

Dear Ms. Scantlebury:

Elliott D. Pollack & Company was asked to conduct an initial review of the Economic, Small Business, and Consumer Impact Statement (EIS) produced by the Arizona Department of Water Resources (ADWR) for rule modifications titled, "*ASSURED WATER SUPPLY RULE MODIFICATIONS TO PROVIDE AN ALTERNATIVE PATH TO DESIGNATION OF A 100-YEAR ASSURED WATER SUPPLY (ADAWS) IN THE PHOENIX AND PINAL AMAS AND TO ALLOW CERTIFICATE OF ASSURED WATER SUPPLY APPLICANTS IN THE PHOENIX AND PINAL AMAS TO COMMINGLE WATER SUPPLIES FOR A LIMITED TERM*". Our review does not opine on water policy. Rather, it focused on the merits of the Economic Impact Statement to determine if the probable economic costs and benefits to affected persons were properly identified.

Overall, the EIS only provided a narrative. It is lacking in critical analyses that support its assumptions or financial metrics that could inform affected persons of the costs or benefits of the proposed rulemaking. We also found several instances where persons directly affected by the proposed rulemaking were not identified. We found no evaluation within the EIS of any alternative policies that could achieve the stated goals. Lastly, there is no information explaining how current or proposed policies are impacting affected regions or Arizona's competitive position. This results in an incomplete Economic Impact Statement and does not properly inform the regulated public.

Assumptions

The EIS notes an important assumption related to the physical availability of water in the Phoenix and Pinal AMAs, citing ADWR's recent groundwater model results which lead to their decision to halt the issuance of designations and certificates that rely on groundwater. As the EIS states "For new growth to occur under current conditions and the traditional AWS rules, developers in these areas will need to find renewable supplies (such as surface water or reclaimed water), the municipality or water provider must secure enough renewable supplies to become designated without the inclusion of groundwater in the portfolio." The results obtained from the models were the basis to form the policy decision to halt the issuance of

designations and certificates. This moratorium created the immediate need for the proposed rulemaking due to the economic costs from the initial policy decision that could follow.

It is our understanding that the methodology used in those models has been seriously questioned and ADWR's resulting policy decisions were issued without public input. Stakeholders have identified the main reason for there being any "unmet demand" was the placement of wells in the model, a process that stakeholders found to be extremely arbitrary and included many well locations that a municipal provider would not use in placing its own wells. The "Updated Model" prepared by water resource engineering experts Matrix Solutions Inc, indicates that all of the volume currently reserved in Analyses of Assured Water Supply are in fact physically available.

Apart from that those concerns, the modeling conclusions themselves did not appear to represent an immediate emergency, yet drastic policy decisions were initiated, necessitating solutions to mitigate the economic costs that would follow. We question whether such urgency in enacting the initial policy to halt economic growth was warranted without an analysis of the regulatory assumptions. Affording additional time for further analysis on such a crucial topic would be enormously beneficial to the state, its political subdivisions, businesses, and Arizona residents. The further absence in the EIS of potential alternatives, outlining cost and benefit comparisons, or any resulting conclusions as to how this rulemaking was determined to be in the highest and best interest of the state is alarming.

Another underlying assumption of EIS for the rule modifications made by the Department is that they expect this rulemaking "to have long-term economic benefits" by providing an alternative path to obtaining a Designation of 100-year Assured Water Supply (DAWS). The Department points out that the rulemaking will reduce costs and add flexibility which will enable new development that could not occur under current AWS rules. We see no analysis supporting the claim for long-term economic benefits, which should include an analysis of the policies on economic competitive positioning (both locally for ADAWS regions and nationally as a state). The barriers of obtaining limited renewable supplies, purchasing all projected water demand before placing development in service, and replacing groundwater appear to remain a substantial financial burden to ADAWS applicants.

There are several economic benefits claimed within the EIS for some affected persons, which include increased housing supply, mitigating population growth disruptions, increasing land values, lowering property tax burdens, increasing state revenues, and supporting the homebuilding industry. There appears to be consensus that the existing AWS rules created economic harm by halting new investment and growth within the affected areas. The EIS only demonstrates that the proposed rulemaking *reduces* current barriers and costs compared to current AWS rules but does not demonstrate whether the new rulemaking reduces those barriers sufficiently enough to enable lost growth and investment to resume as it could under the previous system.

Affected Persons Not Identified/Costs not Explained

We find the approach taken to analyzing the economic benefits and costs in the EIS to be flawed. The approach only compares the rule modification to the existing AWS rules. Thus, the EIS fails to identify or calculate many costs of the proposal to affected persons, including the cost of new water supply, the cost of new infrastructure, and their ripple effects. This should be rectified. The following are several examples:

- **Non-Designated Providers.** The EIS fails to adequately explain the costs to a non-designated provider in order to achieve designated status with additional replenishment obligations applicable to existing development and the requirements for new development.

- **Homeowners.** The EIS claims that homeowners who purchase new homes in subdivisions with AWS determinations based on renewable supplies and replenished groundwater would receive lower property tax assessments if the water provider were a CAGRD member service area because the homeowner is not directly responsible for paying a CAGRD replenishment assessment. This fails to identify the additional costs associated with higher water rates that would be inevitable. The water provider or municipality would recover the costs of replenishment through water rates. Any conversion from CAGRD replenishment obligation would fall to the water provider and, ultimately, the customer. No analysis is provided comparing reduced property taxes to increased water rates.

  Another gap in the economic analysis is the cost of shifting existing member lands from a replenishment obligation paid through the CAGRD to acquiring new non-groundwater water supplies to eliminate the replenishment obligation altogether. That cost analysis should include an assessment of the fact that as Member Lands, these subdivisions have already paid significant fees to CAGRD to acquire supplies to meet replenishment obligations. By rolling these subdivisions into ADAWS, such lands would in essence be starting over in acquiring new supplies. This cost impact merits in depth analysis, which is lacking.

  The EIS also does not identify higher costs to new homeowners in the form of higher home prices that would be necessary to develop homes in ADAWS regions. Reduced housing affordability also impacts local economic conditions and the state.

- **Existing Non-Subdivision Development.** The EIS does not identify new costs to existing businesses or residents in affected areas that currently have no replenishment obligation. Increased water rates to existing customers are highly likely to recover the cost of procuring and delivering renewable water supplies.

- **Future Commercial/Industrial Development.** The EIS does not identify the increased costs to developers or potential users of commercial or industrial (non-subdivision) development in the affected areas. Increases in cost of development and operating costs also impacts local economic conditions and the state.

Alternatives

The EIS provides no substantive assessment of alternative courses of action to ADAWS that could have less adverse economic impact, such as changes in rules, policy or practices that would result in greater physical availability of groundwater. There is no mention of potentially less costly solutions or comparing the cost to develop and procure renewable water supplies to systems currently in place like the CAGRD. As mentioned previously, ADWR stifles any analysis in the EIS with the assumption that there is no physical availability of groundwater to support new growth and as such, the only path forward for such growth is ADAWS as proposed by ADWR. Yet, there is no indication in the EIS that ADWR has assessed any regulatory ways to identify greater supplies of groundwater to be physically available.

An example of an alternative, mentioned previously in our review, is well movement. At a minimum, ADWR should have assessed the cost of well movement or other infrastructure improvements to improve access to groundwater supplies to achieve greater physical availability compared to the anticipated costs of acquiring the New Alternative Water Supplies.

A financial analysis and comparison are warranted to support the proposed rulemaking to other alternatives and the EIS is lacking any such analyses. There appears to be sufficient resources and available expertise to indicate whether the new rule amendments are the best solution to sufficiently reduce costs, induce economic activity, and achieve sustainability goals.

Competitive Positioning

There is no mention of how current or proposed policies affect the competitive positioning of either the ADAWS regions to neighboring municipalities or the State of Arizona to other states and countries. While the proposed rulemaking provides an alternative path to development compared to current AWS rules, the costs associated for the anticipated new development are not outlined or compared to the cost to develop elsewhere. The cost of development within the affected areas under the proposed rulemaking will be substantially higher and will vary widely from location to location within each service area. This will affect home affordability and the viability of commercial and industrial projects. Additionally, local water rates will rise from their current levels across the water providers service area.

An analysis of short-term and long-term competitive positioning is warranted for inclusion in the EIS. This would provide clarity on the potential magnitude of any expected benefits that the EIS claims. It would also identify challenges to mitigate in order to improve the competitiveness of affected regions and the state.

Sincerely,

Danny Court
Principal, Senior Economist
Elliott D. Pollack & Company

DATE 9-23-24

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Henry Hill

Howard Hughes

The Howard Hughes Corporation
9950 Woodloch Forest Drive
Suite 1100
The Woodlands, Texas 77380
howardhughes.com

September 23, 2024

Filed electronically to docketsupervisor@azwater.gov

Arizona Department of Water Resources
Attn: Sharon Scantlebury, Docket Supervisor
1110 West Washington St., Suite 310
Phoenix, AZ 85007

Re: Comments to August 23, 2024 Proposed Rules on Alternative Designation of Assured Water Supply ("ADAWS"), published in the Arizona Administrative Record, Vol. 30, Issue 34, Pages 2623-2633 (the "ADAWS Proposed Rules")

Dear Sir or Madam:

On behalf of Howard Hughes Holdings, Inc. and its affiliates (collectively, "Howard Hughes"),[1] we appreciate the opportunity to comment on the proposed rules on Alternative Designation of Assured Water Supply ("ADAWS") referenced above. Howard Hughes is a national, vertically integrated real estate developer, and owner and developer of the Teravalis Masterplanned Community in Buckeye. Comprising the former Douglas Ranch and Trillium projects, Teravalis covers 37,000 acres and will support more than 100,000 homes and approximately 300,000 people by the time development is completed over the next several decades. Water is a critical concern for us and planning water supply and usage over the life of the project is one of the most important things we do. Since our arrival in Arizona, we have worked with both City of Buckeye and the Arizona Department of Water Resources ("ADWR") on water issues affecting our community and intend to continue to do so over the life of the project.

We have two major concerns with the ADAWS rules going forward:

Existing certificates of assured water supply must be protected. Floreo, the initial phase of Teravalis, is underway in reliance on certificates of assured water supply issued by ADWR. The proposed ADAWS rules allow a municipal provider enrolling in the program to rely on "estimated groundwater . . . demand for unbuilt portions of issued certificates of assured water supply . . . ." It is essential to us that the groundwater already reserved in the certificates issued for Floreo be protected and utilized for the development of Floreo and that this provision not be used to support growth off of the project. The preamble to the proposed rules indicates that the certificates will be honored should a designation issued under the ADAWS rules lapse, but this assurance must be included in the rules themselves.

[1] HHC Douglas Ranch Member, LLC, Douglas Ranch Development Holding Company, LLC, Douglas Ranch Land Company, LLC, Trillium Management Development Holding Company, LLC, Trillium Land Company, LLC, and Trillium Development Holding Company, LLC.

Issued Analyses of Assured Water Supply should also be protected. Two separate Analyses of Assured Water Supply were issued by ADWR for the former Douglas Ranch lands lying within Teravalis. As with certificates, Analyses are important considerations for investors in masterplanned communities as they represent a reservation of groundwater that can be relied upon over the life of the project, to provide assurances that water will be there to support the massive investments that masterplanned communities represent. In this rulemaking, ADWR should provide a mechanism whereby the reserved groundwater in existing Analyses continue to be protected and can be utilized by the municipal water provider to support subdivision development on Analysis lands. This would both provide the City with a source of water to support growth in Teravalis and other masterplanned communities holding Analyses, thereby reducing the need for new supplies to support growth within the community.

We continue to review and consider the ADAWS proposal and intend to work with the City and ADWR in making this concept work going forward. We appreciate the opportunity to comment. We are including as an attachment, more detailed comments on the proposal.

Sincerely,

Charley Freericks
President – Phoenix Region
Howard Hughes

Detailed Comments of Howard Hughes to the August 23, 2024 Proposed Rules on Alternative Designation of Assured Water Supply ("ADAWS"), published in the Arizona Administrative Record, Vol. 30, Issue 34, Pages 2623-2633 (the "ADAWS Proposed Rules")

General Comments

Need for a Transition Period. The process of implementing ADAWS is likely to take a significant amount of time. A municipal provider cannot even apply for an ADAWS until that provider acquires a New Alternative Water Supply that meets the various criteria of an assured water supply. Meantime, the Department should resume issuing certificates of assured water supply ("Certificates") as an interim measure. All of the major groundwater management tools, including the Groundwater Management Act itself in 1980 and the implementation of replenishment obligations and the assured water supply ("AWS") program rules in the mid-1990s, have included a transition process to implement new requirements over time. Yet here, with the release of the Phoenix AMA Model and simultaneous announcement of a moratorium on new Certificates, the entire program has been turned on a dime. As we note below, we do not believe that there is actually a 4% deficit in demand under the Phoenix AMA Model if reasonable well locations are used, but even if there is, a 4% shortfall – less than half of which is due to municipal groundwater demand – does not provide a basis for upending the entire existing system.

Most of the ADAWS Proposed Rules are Premature as to the Phoenix AMA[1]. The underlying premise for proposing much of this Rules package is the Department's conclusion of a groundwater deficit in the Phoenix AMA. However, as the Department is aware, there have been continuing discussions with the Department about the Phoenix AMA Model and its underlying assumptions. Matrix New World has prepared an update to the Phoenix AMA Model (the "Updated Model") and submitted that update to the Department for review months ago. The Updated Model demonstrates that, through well movement alone, unmet demand in the Phoenix AMA would be resolved. Until these discussions are concluded, it is completely premature to propose a Rules package based on a premise that may or may not be accurate.

SB 1181, adopted in the last legislative session, requires the Department to adopt amended rules by January 1, 2025, <u>but only as to the incorporation of extinguishment credits and groundwater allowances associated with member lands into a designation of assured water supply</u>. (SB1181, Sec. 6) This issue is dealt with in proposed amendments to rule A.A.C. 12-15-724. Due to the legislative deadline, the proposed amendments to rule 12-15-724 is the only portion of the ADAWS Proposed Rules that must be considered at this time.

Specific Comments on Draft Rules

Although there may need to be significant changes to the ADAWS Proposed Rules based on the Updated Model, we submit the following comments to the ADAWS Proposed Rules for the Department's consideration:

[1] The Howard Hughes projects are all based in the Phoenix AMA, and our comments accordingly focused on that AMA.

A. Preamble

The ADAWS Proposed Rules would allow an ADAWS holder to rely in part on the physical availability of groundwater equal to the water demand of unbuilt subdivisions or lots that have Certificates. We hold two existing unbuilt Certificates and need assurances that this practice will not undermine the validity of those Certificates. The preamble language states: "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." This position needs to be expressly stated in the rules themselves so there is no uncertainty for Certificate holders. The Department is allowing the ADAWS holder to determine the water demand represented by these unbuilt subdivisions or lots and to include a groundwater volume based on that water demand in the holder's water portfolio for service to anyone within the provider's service area. In addition, this physically available groundwater is subject to the 25% reduction in the provider's groundwater portfolio under proposed rule 12-15-710(H)(3) and -710(I). If the Department ultimately revokes the provider's ADAWS or refuses to extend it, the Certificate for these subdivisions could be undermined.

Objection: For the reasons stated above, we object to the omission from the ADAWS Proposed Rules of a statement protecting existing Certificate, if an ADAWS lapses or terminates. We request that the Department amend the ADAWS Proposed Rules to add new subsection 711(K) as follows: "K. If a designated provider's designated status expires or is otherwise terminated, any certificate previously issued in the designated provider's service area would remain in effect."

B. Proposed Rules 12-15-710(H), (I) & J

1. **Timing of Applying for ADAWS**. A municipal provider cannot even apply for an ADAWS until the applicant has a New Alternative Water Supply that meets all the requirements of the assured water supply rules. This creates tremendous potential for delay in obtaining an ADAWS. Proposed rule 12-15-710(H)(1) uses 2023 as the year for calculating the municipal provider's groundwater portfolio. But, by the time the provider has a New Alternative Water Supply and submits an application, the 2023 numbers could be significantly out-of-date and not reflective of the most-current groundwater pumping by that provider. Any increase in groundwater pumping occurring after 2023 would erode the portion of the New Alternative Water Supply available for future growth and make it harder for the provider to meet its current, committed and projected water demands.

Objection: For the reasons stated above, in proposed rule 12-15-710(H)(1), we object to the use of the calendar year 2023 and request that the Department allow the municipal provider to use any of the three calendar years prior to submission of the ADAWS application, so long as the annual report submitted for the selected calendar year has been verified by the ADWR Director.

2. **Deemed Groundwater Volume—Analyses**. Under proposed rule 12-15-710(H), the physically-available groundwater volume is based initially on the water provider's current water

demands that are served with groundwater[2] and the water demands of unbuilt portions of issued Certificates of Assured Water Supply that would be expected to be served by the provider. Future growth would be supported by New Alternative Water Supplies. The formula ignores the groundwater supplies reserved by ADWR to Analyses of Assured Water Supply, which were intended to serve new subdivisions. These Analyses were duly issued by ADWR under its assured water supply rules, were obtained in good faith by their holders and relied upon by their holders in making very large capital investments in their proposed communities for such things as planning, designing and permitting. The current AWS rules protect the groundwater supply recognized in Analyses from subsequent assured water supply determinations. A.A.C. R12-15-703(F)(1). But, under the ADAWS Proposed Rules, the Analyses are rendered worthless.

The ADAWS proposal should be modified to allow these Analyses to remain in place, and to allow development that occurs within masterplanned communities holding these Analyses to rely on that reserved groundwater when developing. Including the groundwater volume reserved under Analyses of Assured Water Supply would ensure that the municipal providers applying for an ADAWS will have a reasonable amount of water available for growth from the outset, particularly in communities under development already in reliance on an Analysis. It is critical to our clients that an ADAWS have multiple years of "running room" because major infrastructure investment will not occur unless there is confidence that the ADAWS will be in place when it comes time to plat. The communities planned under the Analyses are very large and take years to build out. Starting off with a reasonable volume of physically-available groundwater to support future growth within these communities would honor ADWR's decision to issue the Analyses in the first place and would allow the municipal provider to hold an initial designation of reasonable length.

Objection: For the reason stated above, in proposed rule 12-15-710 (H)(1), we object to the omission of the groundwater reserved under Analyses of Assured Water Supply from the calculation of physically available supply. We request that ADWR add to subsection (H)(1) those volumes of groundwater, reserved under one or more Analyses 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.

3. **Reduction in Groundwater Volume**. Under proposed rules 12-15-710 (H) and 710(I), the physically-available groundwater volume would be immediately reduced by a volume equal to 25 percent of the New Alternative Water Supply identified in the initial application or the modification, as applicable. The result is that, at most, only 75 percent of the New Alternative Water Supply could be used for future projected water demands, because 25 percent of the New Alternative Water Supply would be needed to replace the reduction in the physically-available groundwater volume.

There are a number of significant problems associated with this 25 percent cut in the volume of physically-available groundwater.

[2] We recognize that the groundwater-pumped calculation includes stored water that the provider recovers from wells that are located outside the area of impact.

- Unreasonable Reduction. The percentage is unreasonable, given the actual projected groundwater shortfall in the Phoenix AMA. This 25 percent cut is 12.5 times the projected groundwater shortfall of 2 percent identified by the Phoenix AMA Model as attributable to municipal groundwater uses. Any percentage that is higher than 2 percent would impose on the ADAWS applicant the responsibility to account for draws on the aquifer that are the result of agricultural, industrial and commercial pumping. Also, as noted above, we expect that the Department will conclude that there is no 100-year groundwater deficit in the Phoenix MAA based on the Updated Model. If that expectation proves correct, any automatic reduction in the provider's groundwater portfolio upon acquisition of New Alternative Water Supplies will be unreasonable and unnecessary. Finally, the percentage is also unreasonable because it does not take into account the obligation of the municipal provider to replenish a portion of its so-called legacy pumping. The aquifer will benefit simply by the municipal provider becoming a member service area in the CAGRD.

- Unconstitutional Exaction. The structure created by the proposed rules would very likely result in the owner of property being required to purchase new water supplies well in excess of the estimated volume needed for the owner's new development. Such a requirement would be an exaction and, accordingly, the extra volume of New Alternative Water Supplies an unconstitutional taking under the principles of *Sheetz v. El Dorado County, California*, No. 22-1074 (April 12, 2024).

- No End to Groundwater Reductions. There is no limit on the total reduction in the volume of physically-available groundwater. Apparently, the volume of groundwater is reduced by 25 percent of each New Alternative Water Supply until there is no physically-available groundwater left in the provider's portfolio. Assuming that there is some groundwater deficit in the Phoenix AMA, any reduction in the groundwater portfolio of the water providers should be aimed at reversing only that portion of the deficit that is attributable to municipal providers. Otherwise, the municipal sector would be bearing responsibility for that portion of the groundwater deficit caused by agriculture, industry, or commercial pumpers.

- Overreach under Arizona Law. The Groundwater Code allows groundwater to be considered as physically available once the purported groundwater deficit is resolved, either because of refinements to the Phoenix AMA Model or use of New Alternative Water Supplies, or some other reason. A.R.S. § 45-576(M). The water provider's groundwater portfolio should not be automatically reduced to zero without any consideration of the condition of the aquifer.

  In addition, issuing an ADAWS is a licensing decision. Requiring the municipal provider to absorb a 25 percent cut in its New Alternative Water Supplies is a licensing requirement that is not authorized by or consistent with the assured water supply statutes which do not require any such cut and, therefore, is invalid under A.R.S. § 41-1030(A).

- Effluent. Whatever the percentage ends up being, no cut should apply to New Alternative Water Supplies consisting of effluent, if and to the extent that the new effluent supply is attributable to other New Alternative Water Supplies served by the applicant. Otherwise, the Department would be imposing a 25 percent cut on the New Alternative Water Supply when it is initially added to the water provider's portfolio and imposing another 25 percent cut when that Supply is used and returned as effluent. This result is simply unfair to the provider.

- Delay in Actual Use. The immediate reduction in the physically-available groundwater volume does not take into account the possibility that the New Alternative Water Supply will not be immediately available to replace the reduced groundwater volume. This could happen, for example, if the applicant proves that they have the financial capability to construct adequate water delivery, storage and treatment works for their water supplies, but the water delivery, storage and treatment facilities are not in place and operational at the time the application is submitted or approved. The provider would have a reduction in its physically-available groundwater supply before the provider can bring the New Alternative Water Supplies online to replace those reduced supplies. Any lag in the immediate availability of the New Alternative Water Supplies will adversely affect the ability of the applicant to meet its current, committed and projected water demands.

- Financial Burdens. The automatic 25 percent reduction will greatly increase the costs of water acquisition for municipal providers that wish to apply for an ADAWS. The water provider would have to pay for a New Alternative Water Supply for new growth, plus an amount needed to offset the reduction in groundwater supplies. This will create a significant financial burden on the providers and their water customers.

  To offset the cost impact on their customers, we anticipate that municipal providers would require the development community to pay most, if not all, of the costs of acquiring New Alternative Water Supplies. This could entail the purchase of supplies equal to the expected water demands of a new development, plus an additional volume to make up for the 25 percent reduction. For example, if a new development has a projected water demand at buildout of 500 AF, the amount of new water needed to account for that development (including the need to offset the loss of physically-available groundwater) would be 666.66 AF (.75 x 666.66 = 500). Thus, the structure will greatly increase the overall cost of developing lots and, accordingly, the price of new homes on those lots at a time when housing costs and availability are already very challenging.

Objections: For the reasons stated above:

(a) In proposed rules 12-15-710(H)(2) and (I)(2), we object to the 25 percent cut to the physically-available groundwater volume. We request that the Department change 25 percent to 2 percent for so long as the Phoenix AMA Model projects a groundwater shortfall of 2 percent attributable to municipal groundwater uses. We reserve the right to continued discussion with the Department about the Phoenix AMA Model and its projections and the Updated Model.

(b) In proposed rules 12-15-710(H)(2) and (I)(2), we object to the application of any cut to New Alternative Water Supplies consisting of effluent. We request that the Department exempt all New Alternative Water Supplies that consist of effluent from any cut, to the extent that the effluent was generated from the delivery of New Alternative Water Supplies by the water provider.

(c) In proposed rule 12-15-710(H)(3) and (I)(2), we object to the reduction in the physically-available groundwater volume immediately following the determination by the Director that the New Alternative Water Supply meets the requirements of an assured water supply. We request 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.

(d) In proposed rule 12-15-710(I)(2), we object to the continual application of the 25 percent cut to all New Additional Water Supplies. We request that the Department require a periodic reconsideration of the amount of the percentage cut and the need for any reduction at all, if aquifer conditions improve due to replenishment or otherwise, or if the Phoenix AMA Model is updated such that there are no unmet demands attributable to municipal groundwater uses.

(e) We object to proposed rule 12-15-710(J). We request that the Department amend that rule so that additional sources of groundwater may be added to a provider's portfolio, even if that provider holds an ADAWS, if aquifer conditions improve due to replenishment or otherwise, or if the Phoenix AMA Model is updated such that there are no unmet demands attributable to municipal groundwater uses.

C. **Groundwater Allowance under amended Rule 12-15-724**. The proposed ADAWS rules include proposed amendments A.A.C. R12-15-724 pertaining to the calculation of the groundwater allowances held under a Designation. Under the current assured water supply rules, a municipal provider applying today for a Designation would receive no groundwater allowance. Under the proposed amendments to R12-15-724, ADAWS applicants would receive a groundwater allowance based on either their groundwater pumping in 2023 or their total water deliveries in 2023, plus the unused groundwater allowances of Certificates within the provider's service area.

1. **Timing of Application**. In proposed rule 724(A)(4)(a), ADWR again uses 2023 as the calendar year for calculating the municipal provider's groundwater allowance. As noted in Section B.1 above, a municipal provider may not be able to apply for an ADAWS for some time, because the municipal provider must wait until it has a New Alternative Water Supply that qualifies as an assured water supply before it may apply.

Objection: In proposed rule 724(A)(4)(a), we object to the use of the calendar year 2023. We request that the Department allow the municipal provider to use any of the three calendar years prior to submission of the ADAWS application in the calculation of its groundwater allowance, so long as the annual report submitted for the selected calendar year has been verified by the ADWR Director.

2. **Certificate Groundwater Allowances/SB1181**. Under subsection 724(A)(4)(b), the unused groundwater allowance for issued Certificates is added to the calculation of the municipal provider's overall groundwater allowance. Because of SB1181, this shifting of the entire groundwater allowance at the outset of the designation is problematic.

Under SB1181, municipal providers who apply for an ADAWS may elect to delay assuming the replenishment obligation of member lands for up to ten years. Thereafter, the municipal provider may phase in their assumption of the replenishment obligation over another period of up to ten years. If a municipal provider makes an election to delay its assumption of a member lands' replenishment obligations, that municipal provider should not also immediately have rights to the remaining groundwater allowances for those member lands transferred to it. Otherwise, all groundwater delivered to member lands would be considered "excess" groundwater, and the member land owners will have to pay for replenishment services on all groundwater delivered to them. In other words, the member lands would continue to bear the replenishment obligation, but would no longer have the means of reducing that obligation through their groundwater allowance.

Objection: For the reason stated above, we object to proposed rule 12-15-724(A)(4)(b), because it does not take into account the possible delay in the applicant's assumption of the replenishment obligations of member lands, as allowed under SB1181. We request that:

(a) ADWR delay the transfer of any of the remaining groundwater allowances under Certificates of Assured Water Supply, if an applicant for an ADAWS notifies the Director, pursuant to A.R.S. § 48-3771(G), that the applicant elects not to assume the member lands' replenishment obligation; and

(b) After the applicant begins to assume a percentage of the member lands' replenishment obligation under A.R.S. § 48-3771(I), ADWR must transfer a portion of the volume of remaining groundwater allowances to the applicant once per year, in an amount equal to 10 percent of the balance existing when the applicant begins to assume a percentage of the member lands' replenishment obligation under A.R.S. § 48-3771(I), with such transfers to continue until the allowance is exhausted.

D. **Term of Designation.** Under proposed rule 12-15-711(D), the initial term of an ADAWS is limited to 15 years. However, under current assured water supply rules, there is no limit on the Designation's term other than that imposed by limitations of water resources or water demand projections. The current rules require only that a Designation be reviewed at least every 15 years. The different treatment of ADAWS is unwarranted and unfair, and seems to lack any obvious explanation.

Objection: For the reason stated above, we object to the 15-year limit of an ADAWS initial term. We request that the length of the initial term of an ADAWS be based on the same rules as are applicable to other Designations.

E. **Economic Impact Analysis**. We have not had time to fully review and assess the "Economic, Small Business, and Consumer Impact Statement" issued with the proposed ADAWS rules, but an initial review indicates that no substantive assessment of alternative courses of action

to ADAWS that would have less adverse economic impact has been undertaken. Specifically, the analysis that was done assumes that there is no physical availability of groundwater to support new growth and as such, the only path forward for such growth is ADAWS as proposed by ADWR. This ignores the basic fact that ADWR's assumption that there is no physical availability of groundwater is based on ADWR's own restrictive view of physical availability and is not based on statute. Yet, ADWR has not done an assessment of regulatory ways to identify greater supplies of groundwater to be physically available.

A simple example is well movement. The Phoenix AMA Model and subsequent moratorium on new Certificates was issued without public input and is plainly flawed. The main reason for there being any "unmet demand" is the placement of wells in the model, a process that was extremely arbitrary and included many well locations that a municipal provider would not use in placing its own wells. The Updated Model prepared by Matrix in fact, shows that all of the volume currently reserved in Analyses of Assured Water Supply are in fact physically available. At a minimum, ADWR should have assessed the cost of well movement or other infrastructure improvements in improve access to groundwater supplies to achieve greater physical availability when compared to the anticipated costs of acquiring the New Alternative Water Supplies.

The other obvious gap in the economic analysis is the cost of shifting existing member lands from a replenishment obligation paid through the CAGRD to acquiring new non-groundwater water supplies to eliminate the replenishment obligation altogether. That cost analysis should include an assessment of the fact that as Member Lands, these subdivisions have already paid significant fees to CAGRD to acquire supplies to meet replenishment obligations. By rolling these subdivisions into ADAWS, such lands would in essence be starting over in acquiring new supplies. This cost impact merits in-depth analysis, which is lacking.

E. **Other Issues**.

1. **Technical Change to Proposed Rule 12-15-725(A)(2)(e)(iii)**. There appears to be an error in this proposed rule. Considering changing it as follows: "iii. Add the remaining groundwater allowance. . . to the volume calculated under subsection (A)(2)(e)**(i) or (A)(2)(e)(ii), as selected by the applicant; and**". Delete the "or" at the end of this subsection (iii).

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

Igor Sokolov <sokolovis@me.com>
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

Mon, Sep 23, 2024 at 10:50 AM

DATE 9/23/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the ArizonaDepartment of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Igor Sokolov

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Jim Donna Madsen <phxmadsens@gmail.com>
Mon, Sep 23, 2024 at 6:33 AM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

Sept 23, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a supporter of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

James Madsen

September 23, 2024

Dear Ms. Scantlebury:

As a resident of Pinal County, please accept this letter as my direct support for the new Assured Water Supply rules for Pinal County.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working to develop these new rules, which will certainly go a long way in building a more vibrant economy.

We all know how a stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering overall economic health and a higher quality of life in our community.

Thank you for pushing this solution forward.

Sincerely,

James E. Mannato
6773 W. Olberg Rd.
Queen Creek, AZ (Pinal County)
85142
480-550-2897

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and commingling rules of proposed rulemaking

1 message

Noah Mcpeak <noahjmcpeak@gmail.com>
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

Mon, Sep 23, 2024 at 11:56 AM

9/23/24

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and thes taff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

James McPeak

9/23/2024

Dear Ms. Scantlebury:

As a resident of Pinal County, please accept this letter as my direct support for the new Assured Water Supply rules for Pinal County.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working to develop these new rules, which will certainly go a long way in building a more vibrant economy.

We all know how a stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering overall economic health and a higher quality of life in our community.

Thank you for pushing this solution forward.

Sincerely,

Jason & Danielle Perry

9/23/2024

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, which we believe will create a sustainable water supply in the Pinal AMA.

Through this letter, I am expressing my direct support for the new rules and encouraging their adoption as soon as possible.

As a Pinal County business owner, I know it is important to have a vibrant economy that inspires growth and attracts more high quality workers who can become valued members of our community.

A stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering the overall economic health and quality of life in our community.

I genuinely appreciate this initiative, as new water rules will mark a crucial step forward for all of Pinal County.

Sincerely,

Jason Perry

JDP Racing, Inc.

09/23/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own. I believe the Podium Club, and the Attesa project as a whole, will bring sustained economic growth to Casa Grande and the surrounding area.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

John Brodie

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Joshua M Tybur <jmtybur@gmail.com> Mon, Sep 23, 2024 at 11:51 AM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

Dear Ms. Scantlebury:

I am writing in support of your proposed new rules regarding an Assured Water Supply for Pinal County.

I am not a Pinal County resident, but a strong supporter of the Podium Club at Attesa. The inability to get a required water certificate has stalled development at Arizona's premier race circuit and motorsports club, including the construction and sale of trackside homes, race shops, condos, and more. This issue has postponed jobs, tourism and growth. It has halted track expansion and upgrades necessary to host major, nationally televised race events.

A water rule change will release the brakes and let them build. Pinal County and Casa Grande will benefit.

I strongly encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Josh Tybur

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

Justin Low <justin.m.low039@gmail.com> Mon, Sep 23, 2024 at 1:42 PM
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

9/23/2024
Dear Ms. Scantlebury:
I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.
While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.
I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.
Sincerely,
Justin M. Low

Docusign Envelope ID: D8349D66-7286-4E2E-9813-1A6A9C4284BC

Kevin Kirkwood

8432 E Shetland Trail

Scottsdale, AZ 85258

(602) 619-7213

Kevin@KrkRealty.com

September 23, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I own or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

DocuSigned by:
kevin kirkwood
1C2416260CB64F3...

Kevin Kirkwood

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Kyle Nelson <kyleefini@gmail.com> Mon, Sep 23, 2024 at 11:08 AM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

9/23/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is because I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Kyle Nelson

Matteson Farms

35416 W. Miller Road

Stanfield, Arizona 855172

September 23, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking submitted to Secretary of State's Office on August 7, 2024 and published in the Arizona Administrative Record.

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

The new rules allow for agriculture and municipal demands to co-exist by providing a more natural progression of subdivision development consistent with market forces. Through this letter, I am expressing my direct support for the new rules and encourage their adaption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Steve Matteson

Steve Matteson
Land Owner

MARICOPA CONSOLIDATED
DOMESTIC WATER IMPROVEMENT DISTRICT
PO Box 209, Office: 45290 W. Garvey Avenue, Maricopa, AZ 85139
Phone: 520-568-2239 Fax: 520-568-2185, Emergency: 520-251-1896
mdwid85239@hotmail.com

September 23, 2024

Via email: docketsupervisor@azwater.gov

Sharon Scantlebury
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St., Suite 310 Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

William E. Collings

Water District Engineer

09/23/2024

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, which we believe will create a sustainable water supply in the Pinal AMA.

Through this letter, I am expressing my direct support for the new rules and encouraging their adoption as soon as possible.

As a business owner who services areas in Pinal County, I know it is important to have a vibrant economy that inspires growth and attracts more high quality workers who can become valued members of our community.

A stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering the overall economic health and quality of life in our community.

I genuinely appreciate this initiative, as new water rules will mark a crucial step forward for all of Pinal County.

Sincerely,

Bill McKusick

MCQ6 Logistix, LLC

2225 W Pecos Rd, Ste 4

Chandler, AZ 85224

MARICOPA-STANFIELD IRRIGATION & DRAINAGE DISTRICT

OFFICERS
Bryan M. Hartman, President
Daniel W. Thelander, Vice-President
Kelly Anderson, Secretary

GENERAL COUNSEL
Paul R. Orme

DIVISION 1 DIRECTORS
Kelly Anderson
Jacob Feenstra
Bryan M. Hartman

DIVISION 2 DIRECTORS
Siebe Hamstra
James P. Whitehurst
Craig Zinke

DIVISION 3 DIRECTORS
Daniel W. Thelander
Tony Dugan
Larry Hart

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Maricopa-Stanfield Irrigation & Drainage District (MSIDD) thanks you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

MSIDD is an agricultural water provider consisting of more than 80,000 acres in Pinal County. These rules are important because they provide a means to orderly transition land from agricultural to urban use and decrease reliance on local groundwater supplies. As Pinal County continues to adapt to ongoing Colorado River shortages, transitioning agricultural land to less water intensive urban use is a crucial tool to help preserve our water supplies and will benefit agriculture and the overall Pinal County economy.

A sustainable water supply is very important to all Pinal County residents and industry. The ADAWS will help give all sectors of the economy confidence that their homes, businesses, industries and land will continue to thrive with a truly sustainable water supply. MSIDD supports the new rules and encourages their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Brian Yerges
General Manager
Maricopa-Stanfield Irrigation & Drainage District

41630 W. LOUIS JOHNSON DR., MARICOPA, ARIZONA 85138 • (520) 424-3344 • FAX: (520) 424-3281

THE LAW OFFICE OF
NATHAN A. SKINNER, PLC

1744 S. VAL VISTA DRIVE, SUITE 201
MESA, ARIZONA 85204

TELEPHONE: (480) 285-2140
FACSIMILE: (480) 240-1339

WWW.NSKINNERLAW.COM
NATE@NSKINNERLAW.COM

September 23, 2024

Sharon Scantlebury
Docket Supervisor ADWR
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop the new Assured Water Supply rules, specifically the ADAWS, which I believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. **Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible**.

As a Pinal County landowner who has invested in farm ground, these new rules will allow our farm investments to naturally progress to residential subdivision development in the future, consistent with market forces.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff.

Sincerely,

Nathan A. Skinner

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

(null) pjmcgrew <pjmcgrew@frontier.com> Mon, Sep 23, 2024 at 10:52 AM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

09/22/24

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that
I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and thes
taff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Pat McGrew

425 231-5199

Sent from my iPhone

Papago Butte Domestic Water Improvement District

PWS-11-097

PO Box 630, 49578 W. Papago Road., Maricopa, AZ 85139
Office: 45290 w. Garvey Avenue, Maricopa, AZ 85139
520-568-2239, Fax 520-568-2185, Emergency line: 520-251-1896

September 23, 2024

Via email: docketsupervisor@azwater.gov

Sharon Scantlebury
Docket Supervisor Arizona Department of Water Resources
1110 W. Washington St., Suite 310 Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

William E. Collings

Water District Engineer

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

Pole Position Carriers - Dispatch <dispatch@polepositioncarriers.com> Mon, Sep 23, 2024 at 11:23 AM
To: docketsupervisor@azwater.gov
Cc: Podium Club Team <info@podiumclub.com>

DATE 09/23/24

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and t
he staff at the ArizonaDepartment of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, which we believe will create a sustainable water supply in the Pinal AMA.

Through this letter, I am expressing my direct support for the new rules and encouraging their adoption as soon as possible.

As a Pinal County business owner, I know it is important to have a vibrant economy that inspires growth and attracts more high quality workers who can become valued members of our community.

A stable water supply is crucial for maintaining strong property values, supportingbusinesses, and fostering the overall economic hea
lth and quality of life in ourcommunity.

I genuinely appreciate this initiative, as new water rules will mark a crucial step forward for all of Pinal County.

Sincerely,

NAME Paul Borovkov

BUSINESS Pole Position Carriers, LLC

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Renee Stone <reneedstone@gmail.com> Mon, Sep 23, 2024 at 3:13 PM
To: docketsupervisor@azwater.gov
Cc: "info@podiumclub.com" <info@podiumclub.com>

Ms. Scantlebury
Arizona Department of Water Resources
1110 W. Washington St.
Phoenix, AZ 85007

Subject: Support for New Assured Water Supply Rules for Pinal County

Dear Ms. Scantlebury,

There are moments when the decisions we make today shape the kind of future we all want to live in. The proposed Assured Water Supply rules for Pinal County represent one of those pivotal choices. While I may not reside in the area year-round, I own property in Pinal County and plan to build and spend part of the year here.

Why does this matter? Water is not just a resource; it is the foundation upon which our communities grow, thrive, and sustain themselves. These new rules are not just about ensuring water supply—they're about securing the future for businesses, homeowners, and the next generation that will call Pinal County home.

The efforts of the Arizona Department of Water Resources and the Governor's Office to bring this initiative forward are not just appreciated, they are essential. A reliable and well-managed water supply will lead to stronger communities, sustainable growth, and a better quality of life for all of us.

Thank you for driving this important change. Your leadership today is shaping a brighter, more prosperous tomorrow for Pinal County, and I fully support this initiative.

Sincerely,
Renee Stone
Owner, 331 South Florence St
Casa Grande, AZ 85122

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Rich Reininger <reininr@icloud.com> Mon, Sep 23, 2024 at 2:06 PM
To: docketsupervisor@azwater.gov
Cc: Bill Tybur <Bill@podiumclub.com>

Dear Ms. Scantlebury:

I am writing in support of your proposed new rules regarding an Assured Water Supply for Pinal County.

I am not a Pinal County resident, but a strong supporter of the Podium Club at Attesa. The inability to get a required water certificate has stalled development at Arizona's premier race circuit and motorsports club, including the construction and sale of trackside homes, race shops, condos, and more. This issue has postponed jobs, tourism and growth. It has halted track expansion and upgrades necessary to host major, nationally televised race events.

A water rule change will release the brakes and let them build. Pinal County and Casa Grande will benefit.

I strongly encourage the approval and adoption of the new rules as soon as possible.

Sincerely, Rich Reininger

Sent from my iPhone

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Robert Maldonado <robpmaldonado@gmail.com> Mon, Sep 23, 2024 at 8:49 AM
To: docketsupervisor@azwater.gov, info@podiumclub.com

September 23, 2024

Dear Ms. Scantlebury:

As a resident of Pinal County, please accept this letter as my direct support for the new Assured Water Supply rules for Pinal County.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working to develop these new rules, which will certainly go a long way in building a more vibrant economy.

We all know how a stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering overall economic health and a higher quality of life in our community.

Thank you for pushing this solution forward.

Sincerely,

Robert Maldonado

Pinal County Resident

DATE 9/23/24

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

NAME

Robert Suárez

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments Pertaining to ADAWS & Commingling Rules Notice of Proposed Rulemaking

1 message

TIM ROSE <timrose19@me.com> Mon, Sep 23, 2024 at 2:10 PM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: info@podiumclub.com

September 22, 2024

Dear Mr. Scantlebury,

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa. Because of this, I'm a very frequent visitor to Casa Grande. The Podium Club represents the first project at this unique master planned, multi-use community. It only needs the new water rules to begin development in earnest, which is especially important to me. One of the many reasons I became a member is because I'm very interested in moving to the area and building a race shop at the track.

I appreciate the efforts of the Govenor's Office and the staff at the Arizona Department of Water Resources (ADWR). I encourage the approval an adoption of the new rules as soon as possible.

Sincerely,

Tim Rose
Rose Motorsports
480.286.1848

Santa Cruz Ranch

09/23/2024

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024, and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA.

As a part of the agricultural economy, these rules are important to me because they provide me with the freedom to transition my land from agricultural to urban use when it is the right time for me and my family. These rules will provide a more natural progression from agriculture to municipal consistent with market forces.

A sustainable water supply is very important to all aspects of our economy in Pinal County. The ADAWS will help give all sectors of the economy confidence that their homes, businesses, industries and land will continue to be valuable because we will have a truly sustainable water supply. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

Once again, I appreciate all the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County.

Sincerely,

Bryan M Hartman

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

2 messages

Chris Willson (ScienceofSpeed) <Chris@scienceofspeed.com> Mon, Sep 23, 2024 at 10:46 AM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: "info@podiumclub.com" <info@podiumclub.com>

Sep 23, 2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Chris Willson

Chris Willson

General Manager

ScienceofSpeed, LLC

p: 480-894-6277

a: 2521 N Arizona Ave, Chandler, AZ 85225

w: www.ScienceofSpeed.com

NSX & S2000 PERFORMANCE SPECIALISTS

Igor Sokolov <sokolovis@me.com> Mon, Sep 23, 2024 at 10:50 AM
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

DATE 9/23/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the ArizonaDepartment of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Igor Sokolov

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

Shane DeBrock <sdebrock@icloud.com>
Mon, Sep 23, 2024 at 1:04 PM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

September 23rd, 2024

Dear Ms. Scantlebury:
I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County. While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is because I am interested in moving to a trackside home that I can own, or building a race shop at the track.
I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,
Shane DeBrock

FENNEMORE.

Robert D. Anderson
Director
randerson@fennemorelaw.com

2394 E. Camelback Road, Suite 600
Phoenix, Arizona 85016
PH (602) 916-5455 | FX (602) 916-5655
fennemorelaw.com

September 23, 2024

Filed electronically

Arizona Department of Water Resources
Attn: Sharon Scantlebury, Docket Supervisor
1110 West Washington St., Suite 310
Phoenix, AZ 85007

Re: **Comments to August 23, 2024 Proposed Rules on Alternative Designation of Assured Water Supply ("ADAWS"), published in the Arizona Administrative Record, Vol. 30, Issue 34, Pages 2623-2633 (the "ADAWS Proposed Rules")**

Dear Sir or Madam:

We represent the following owners and developers of master planned communities in the Buckeye area: Buckeye Tartesso, LLC and Buckeye Tartesso II, LLC, developers of Tartesso; Belmont Infraco LLC, owner of Belmont; DMB White Tank, LLC, the developer of Verrado; Festival Ranch North, LLC, owner of North Star Ranch; and KEMF WP 2.2, LLC, owner of WestPark. Their developments are all substantial, active projects within the City of Buckeye and/or Maricopa County in the Phoenix AMA and each are holders of Analyses of Assured Water Supply. Each of these developers has made very large capital investments in their projects and has been working diligently on developing solutions to the groundwater challenges in Buckeye and throughout the Phoenix AMA that will allow new residential development to continue in a responsible and economically-sound manner. These developers' collective investments in support of affordable housing in the Buckeye area are far in excess of $1 billion.

We appreciate the efforts of the Department in developing an ADAWS proposal. Unfortunately, as currently embodied in the ADAWS Proposed Rules, the ADAWS concept is unworkable without significant modifications, including increasing the amount of groundwater that an ADAWS holder can rely upon. In addition, we are very concerned that most of the ADAWS Proposed Rules are simply premature, because there is no resolution on the accuracy or appropriate application of the Phoenix AMA groundwater flow model released by the Department in 2023 (the "Phoenix AMA Model"). We have the following general comments on the process, followed by specific comments on the ADAWS Proposed Rules.

General Comments

Need for a Transition Period. The process of implementing ADAWS is likely to take a significant amount of time. A municipal provider cannot even apply for an ADAWS until that provider acquires a New Alternative Water Supply (defined in proposed rule 12-15-701(53)) that meets the various criteria of an assured water supply. Meantime, the Department should resume issuing certificates of assured water supply ("Certificates") as an interim measure. All of the major groundwater management tools, including the Groundwater Management Act itself in 1980 and the implementation of replenishment obligations and the assured water supply ("AWS") program rules in the mid-1990s, have included a transition process to implement new requirements over time. Yet here, with the release of the Phoenix AMA Model and simultaneous announcement of a moratorium on new Certificates, the entire program has been turned on a dime. As we note below, we do not believe that there is actually a 4% deficit in demand under the Phoenix AMA Model if reasonable well locations are used, but even if there is, a 4% shortfall – less than half of which is due to municipal groundwater demand – does not provide a basis for upending the entire existing system.

Most of the ADAWS Proposed Rules are Premature as to the Phoenix AMA[1]. The underlying premise for proposing much of this Rules package is the Department's conclusion that there is a groundwater deficit in the Phoenix AMA. However, as the Department is aware, there have been continuing discussions with the Department about the Phoenix AMA Model and its underlying assumptions. Matrix New World has prepared an update to the Phoenix AMA Model (the "Updated Model") and submitted that update to the Department for review months ago. The Updated Model demonstrates that, through well movement alone, unmet demand in the Phoenix AMA would be resolved. Until these discussions are concluded, it is completely premature to propose a Rule package based on a premise that may or may not be accurate.

SB 1181, adopted in the last legislative session, requires the Department to adopt amended rules by January 1, 2025, <u>but only as to the incorporation of extinguishment credits and groundwater allowances associated with member lands into a designation of assured water supply</u>. (SB1181, Sec. 6) This issue is dealt with in proposed amendments to rule A.A.C. 12-15-724. Due to the legislative deadline, the proposed amendments to rule 12-15-724 are the only portion of the ADAWS Proposed Rules that must be considered at this time.

Specific Comments on Draft Rules

[1] Our clients are all based in the Phoenix AMA, and our comments are accordingly focused on that AMA.

Although there may need to be significant changes to the ADAWS Proposed Rules based on the Updated Model, we submit the following comments to the ADAWS Proposed Rules for the Department's consideration:

A. <u>Preamble</u>

The ADAWS Proposed Rules would allow an ADAWS holder to rely in part on the physical availability of groundwater equal to the water demand of unbuilt portions of existing Certificates. A number of our clients hold existing unbuilt Certificates and need assurances that this practice will not undermine the validity of those Certificates. The preamble language states: "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." This position needs to be expressly stated in the rules themselves so there is no uncertainty for Certificate holders. The Department is allowing the ADAWS holder to determine the water demand represented by the unbuilt portions of existing Certificates and to include a groundwater volume based on that water demand in the holder's water portfolio for service to anyone within the provider's service area. In addition, this physically available groundwater is subject to the 25% reduction in the provider's groundwater portfolio under proposed rules 12-15-710(H)(2), (3) and -710(I). If the Department ultimately revokes the provider's ADAWS or refuses to extend it, the Certificates for these subdivisions could be undermined.

Objection: For the reasons stated above, we object to the omission from the ADAWS Proposed Rules of a statement protecting existing Certificates if an ADAWS lapses or terminates. We request that the Department amend the ADAWS Proposed Rules to add new subsection 12-15-711(K) as follows: "K. If a designated provider's designated status expires or is otherwise terminated, any certificate previously issued in the designated provider's service area would remain in effect."

B. <u>Proposed Rules 12-15-710(H), (I) & (J)</u>

1. **<u>Timing of Applying for ADAWS</u>**. A municipal provider cannot even apply for an ADAWS until the applicant has a New Alternative Water Supply that meets all the requirements of the assured water supply rules. This creates tremendous potential for delay in obtaining an ADAWS. Proposed rule 12-15-710(H)(1) uses 2023 as the year for calculating the municipal provider's groundwater portfolio. But, by the time the provider has a New Alternative Water Supply and submits an application, the 2023 numbers could be significantly out-of-date and not reflective of the most-current groundwater pumping by that provider. Any increase in groundwater pumping occurring after 2023 would erode that portion of the New Alternative Water Supply available for future growth and make it harder for the provider to meet its current, committed and projected water demands.

Objection: For the reasons stated above, in proposed rule 12-15-710(H)(1), we object to the use of the calendar year 2023 and request that the Department allow the municipal provider to use any of the three calendar years prior to submission of the ADAWS application, so long as the annual report submitted for the selected calendar year has been verified by the ADWR Director.

2. **Deemed Groundwater Volume—Analyses**. Under proposed rule 12-15-710(H), the physically-available groundwater volume is based initially on the water provider's current water demands that are served with groundwater[2] and the water demands of unbuilt portions of Certificates that would be expected to be served by the provider. Future growth would be supported by New Alternative Water Supplies. The formula ignores the groundwater supplies reserved by ADWR to Analyses of Assured Water Supply, which were intended to serve new subdivisions. These Analyses were duly issued by ADWR under its assured water supply rules, were obtained in good faith by their holders and relied upon by their holders in making very large capital investments in their proposed communities for such things as planning, designing and permitting. The current AWS rules protect the groundwater supply recognized in Analyses from subsequent assured water supply determinations. A.A.C. R12-15-703(F)(1). But, under the ADAWS Proposed Rules, the Analyses are rendered worthless.

The ADAWS proposal should be modified to allow these Analyses to remain in place, and to allow development that occurs within master-planned communities holding these Analyses to rely on that reserved groundwater when developing. Including the groundwater volume reserved under Analyses of Assured Water Supply would ensure that the municipal providers applying for an ADAWS will have a reasonable amount of water available for growth from the outset, particularly in communities already under development in reliance on an Analysis. It is critical to our clients that an ADAWS have multiple years of "running room" because major infrastructure investment will not occur unless there is confidence that the ADAWS will be in place when it comes time to plat. The communities planned under the Analyses are very large and take years to build out. Starting off with a reasonable volume of physically-available groundwater to support future growth within these communities would honor ADWR's decision to issue the Analyses in the first place and would allow the municipal provider to hold an initial designation of reasonable length.

Objection: For the reason stated above, in proposed rule 12-15-710 (H)(1), we object to the omission of the groundwater reserved under Analyses of Assured Water Supply from the calculation of physically-available supply. We request that ADWR 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

[2] We recognize that the groundwater-pumped calculation includes any stored water that the provider recovers from wells that are located outside the area of impact.

cut-over to the applicant's portfolio of physically-available groundwater when platting occurs on lands covered by the analysis.

3. **Reduction in Groundwater Volume**. Under proposed rules 12-15-710 (H) and 710(I), the physically-available groundwater volume would be immediately reduced by a volume equal to 25 percent of the New Alternative Water Supply identified in the initial application or the modification, as applicable. The result is that, at most, only 75 percent of the New Alternative Water Supply could be used for future projected water demands, because 25 percent of the New Alternative Water Supply would be needed to replace the reduction in the physically-available groundwater volume.

There are a number of significant problems associated with the requirement that 25 percent of New Alternative Water Supplies be used to offset the volume of physically-available groundwater.

- Unreasonable Reduction. The percentage is unreasonable, given the actual projected unmet demand in the Phoenix AMA. This 25 percent offset is 12.5 times the projected groundwater shortfall of 2 percent identified in the Phoenix AMA Model as attributable to municipal groundwater uses. Any percentage that is higher than 2 percent would impose on the ADAWS applicant the responsibility to account for draws on the aquifer that are the result of agricultural, industrial and commercial pumping. Also, as noted above, we expect that the Department will conclude that there is no 100-year groundwater deficit in the Phoenix AMA based on the Updated Model. If that expectation proves correct, any automatic reduction in the provider's groundwater portfolio upon acquisition of New Alternative Water Supplies will be unreasonable and unnecessary. Finally, the percentage is also unreasonable because it does not take into account the obligation of the municipal provider to replenish a portion of its so-called legacy pumping. The aquifer will benefit simply by the municipal provider becoming a member service area in the CAGRD.

- Unconstitutional Exaction. The requirement that 25 percent of New Alternative Water Supplies be used to offset the volume of physically-available groundwater results in an unconstitutional taking under the principles recently reaffirmed in *Sheetz v. El Dorado County, California*, 601 U.S. 267 (2024). We anticipate that, as a direct result of the 25 percent offset, property developers will be required by their water provider to purchase new water supplies well in excess of the estimated volume needed for the owner's new development. The extra water supplies will be needed to make up for the reduction in the water provider's groundwater portfolio under proposed rules 710(H)(2), (3) and 701(I). In effect, the property developer would be paying for a volume of water to serve its new development, plus an amount that would be used to resolve regional groundwater issues that are not

caused by that developer. The resulting exaction would be an unconstitutional taking under *Sheetz.*

- No End to Groundwater Reductions. There is no limit on the total reduction in the volume of physically-available groundwater. Apparently, the volume of groundwater is reduced by 25 percent of each New Alternative Water Supply until there is no physically-available groundwater left in the provider's portfolio. Assuming that there is some groundwater deficit in the Phoenix AMA, any reduction in the groundwater portfolio of the water providers should be aimed at reversing only that portion of the deficit that is attributable to municipal providers. Otherwise, the municipal sector would be bearing responsibility for that portion of the groundwater deficit caused by agriculture, industry, or commercial pumpers.

- Overreach under Arizona Law. The Groundwater Code allows groundwater to be used to prove an assured water supply. A.R.S. § 45-576(M)(1). Once the purported groundwater deficit is resolved in the Phoenix AMA, either because of refinements to the Phoenix AMA Model or use of New Alternative Water Supplies, or some other reason, groundwater will be available once again for assured water supply purposes. At that point, the 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).

- Effluent. Whatever the percentage ends up being, no cut should apply to New Alternative Water Supplies consisting of effluent, if and to the extent that the new effluent supply is attributable to other New Alternative Water Supplies served by the applicant. Otherwise, the Department would be imposing a 25 percent cut on the New Alternative Water Supply when it is initially added to the water provider's portfolio and imposing another 25 percent cut when that Supply is used and returned as effluent. This result is simply unfair to the provider.

- Delay in Actual Use. The immediate reduction in the physically-available groundwater volume does not take into account the possibility that the New Alternative Water Supply will not be immediately available to replace the reduced groundwater volume. This could happen, for example, if the applicant proves that they have the financial capability to construct adequate water delivery, storage and treatment works for their water supplies, but the water delivery, storage and treatment facilities are not in place and operational at the time the application is submitted or approved. The provider would have a reduction in its physically-available groundwater supply before the provider can bring the New Alternative Water Supplies online to replace those reduced supplies. Any lag in the immediate

availability of the New Alternative Water Supplies will adversely affect the ability of the applicant to meet its current, committed and projected water demands.

- Excessively Burdensome. The automatic 25 percent reduction will greatly increase the costs of water acquisition for municipal providers that wish to apply for an ADAWS. The water provider would have to pay for a New Alternative Water Supply for new growth, plus an amount needed to offset the reduction in groundwater supplies. This will create a significant financial burden on the providers and their water customers.

  To offset the cost impact on their customers, we anticipate that municipal providers would require the development community to pay most, if not all, of the costs of acquiring New Alternative Water Supplies. This could entail the purchase of supplies equal to the expected water demands of a new development, plus an additional volume to make up for the 25 percent reduction. For example, if a new development has a projected water demand at buildout of 500 AF, the amount of new water needed to account for that development (including the need to offset the loss of physically-available groundwater) would be 666.66 AF (.75 x 666.66 = 500). Thus, the structure will greatly increase the overall cost of developing lots and, accordingly, the price of new homes on those lots at a time when housing costs and availability are already very challenging.

Objections: For the reasons stated above:

(a) In proposed rules 12-15-710(H)(2) and (I)(2), we object to the 25 percent cut to the physically-available groundwater volume. We request that the Department change 25 percent to 2 percent for so long as the Phoenix AMA Model projects a groundwater shortfall of 2 percent attributable to municipal groundwater uses. We reserve the right to continued discussion with the Department about the Phoenix AMA Model and its projections and the Updated Model.

(b) In proposed rules 12-15-710(H)(2) and (I)(2), we object to the application of any cut to New Alternative Water Supplies consisting of effluent. We request that the Department exempt all New Alternative Water Supplies that consist of effluent from any cut, to the extent that the effluent was generated from the delivery of New Alternative Water Supplies by the water provider.

(c) In proposed rule 12-15-710(H)(3) and (I)(2), we object to the reduction in the physically-available groundwater volume immediately following the determination by the Director that the New Alternative Water Supply meets the requirements of an assured water supply. We request 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.

(d) In proposed rule 12-15-710(I)(2), we object to the continual application of the 25 percent cut to all New Additional Water Supplies. We request that the Department require a periodic reconsideration of the amount of the percentage cut and the need for any reduction at all, if aquifer conditions improve due to replenishment or otherwise, or if the Phoenix AMA Model is updated such that there are no unmet demands attributable to municipal groundwater uses.

(e) We object to proposed rule 12-15-710(J). We request that the Department amend that rule so that additional sources of groundwater may be added to a provider's portfolio, even if that provider holds an ADAWS, if aquifer conditions improve due to replenishment or otherwise, or if the Phoenix AMA Model is updated such that there are no unmet demands attributable to municipal groundwater uses.

C. **Groundwater Allowance under amended Rule 12-15-724**. The proposed ADAWS rules include proposed amendments A.A.C. R12-15-724 pertaining to the calculation of the groundwater allowances held under a Designation. Under the current assured water supply rules, a municipal provider applying today for a Designation would receive no groundwater allowance. Under the proposed amendments to R12-15-724, ADAWS applicants would receive a groundwater allowance based on either their groundwater pumping in 2023 or their total water deliveries in 2023, plus the unused groundwater allowances of Certificates within the provider's service area.

1. **Timing of Application**. In proposed rule 724(A)(4)(a), ADWR again uses 2023 as the calendar year for calculating the municipal provider's groundwater allowance. As noted in Section B.1 above, a municipal provider may not be able to apply for an ADAWS for some time, because the municipal provider must wait until it has a New Alternative Water Supply that qualifies as an assured water supply before it may apply.

Objection: In proposed rule 724(A)(4)(a), we object to the use of the calendar year 2023. We request that the Department allow the municipal provider to use any of the three calendar years prior to submission of the ADAWS application in the calculation of its groundwater allowance, so long as the annual report submitted for the selected calendar year has been verified by the ADWR Director.

2. **Certificate Groundwater Allowances/SB1181**. Under subsection 724(A)(4)(b), the unused groundwater allowance for issued Certificates is added to the calculation of the municipal provider's overall groundwater allowance. Because of SB1181, this shifting of the entire groundwater allowance at the outset of the designation is problematic.

Under SB1181, municipal providers who apply for an ADAWS may elect to delay assuming the replenishment obligation of member lands for up to ten years. Thereafter, the municipal provider may phase in their assumption of the replenishment obligation over another period of up to ten years. If a municipal provider makes an election to delay its assumption of a member land's replenishment obligations, that municipal provider should not also immediately have rights to the remaining groundwater allowances for those member lands transferred to it. Otherwise, all groundwater delivered to member lands would be considered "excess" groundwater, and the member land owners will have to pay for replenishment services on all groundwater delivered to them. In other words, the member lands would continue to bear the replenishment obligation, but would no longer have the means of reducing that obligation through their groundwater allowance.

Objection: For the reason stated above, we object to proposed rule 12-15-724(A)(4)(b), because it does not take into account the possible delay in the applicant's assumption of the replenishment obligations of member lands, as allowed under SB1181. We request that:

(a) ADWR delay the transfer of any of the remaining groundwater allowances under Certificates of Assured Water Supply, if an applicant for an ADAWS notifies the Director, pursuant to A.R.S. § 48-3771(G), that the applicant elects not to assume the member lands' replenishment obligation; and

(b) After the applicant begins to assume a percentage of the member lands' replenishment obligation under A.R.S. § 48-3771(I), ADWR must transfer a portion of the volume of remaining groundwater allowances to the applicant once per year, in an amount equal to 10 percent of the balance existing when the applicant begins to assume a percentage of the member lands' replenishment obligation under A.R.S. § 48-3771(I), with such transfers to continue until the allowance is exhausted.

D. **Economic Impact Analysis**. We have not had time to fully review and assess the "Economic, Small Business, and Consumer Impact Statement" issued with the proposed ADAWS rules, but an initial review indicates that no substantive assessment of alternative courses of action to ADAWS that would have less adverse economic impact has been undertaken. Specifically, the analysis that was done assumes that there is no physical availability of groundwater to support new growth and as such, the only path forward for such growth is ADAWS as proposed by ADWR. This ignores the basic fact that ADWR's assumption that there is no physical availability of groundwater is based on ADWR's own restrictive view of physical availability and is not based on statute. Yet, ADWR has not done an assessment of regulatory ways to identify greater supplies of groundwater to be physically available.

A simple example is well movement. The Phoenix AMA Model and subsequent moratorium on new Certificates was issued without public input and is plainly flawed. The main

reason for there being any "unmet demand" is the placement of wells in the model, a process that was extremely arbitrary and included many well locations that a municipal provider would not use in placing its own wells. The Updated Model prepared by Matrix in fact, shows that all of the volume currently reserved in Analyses of Assured Water Supply are in fact physically available. At a minimum, ADWR should have assessed the cost of well movement or other infrastructure improvements in improve access to groundwater supplies to achieve greater physical availability when compared to the anticipated costs of acquiring the New Alternative Water Supplies.

The other obvious gap in the economic analysis is the cost of shifting existing member lands from a replenishment obligation paid through the CAGRD to acquiring new non-groundwater water supplies to eliminate the replenishment obligation altogether. That cost analysis should include an assessment of the fact that as Member Lands, these subdivisions have already paid significant fees to CAGRD to acquire supplies to meet replenishment obligations. By rolling these subdivisions into ADAWS, such lands would in essence be starting over in acquiring new supplies. This cost impact merits in-depth analysis, which is lacking.

E. **Other Issues**.

1. **Term of Designation**. Under proposed rule 12-15-711(D), the initial term of an ADAWS is limited to 15 years. However, under current assured water supply rules, there is no limit on the Designation's term other than that imposed by limitations of water resources or water demand projections. The current rules require only that a Designation be reviewed at least every 15 years. The different treatment of ADAWS is unwarranted and unfair and seems to lack any obvious explanation.

Objection: For the reason stated above, we object to the 15-year limit of an ADAWS initial term. We request that the length of the initial term of an ADAWS be based on the same rules as are applicable to other Designations.

2. **Technical Change to Proposed Rule 12-15-725(A)(2)(e)(iii)**. There appears to be an error in this proposed rule. Considering changing it as follows: "iii. Add the remaining groundwater allowance. . . to the volume calculated under subsection (A)(2)(e)**(i) or (A)(2)(e)(ii), as selected by the applicant; and**". Delete the "or" at the end of this subsection (iii).

Thank you for considering these comments. We look forward to continuing to work with you on the development of these important proposed rules.

Sincerely,

FENNEMORE CRAIG, P.C.

Robert D. Anderson

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

info@podiumclub.com

1 message

BMI STUDIOS <exracer12@gmail.com> Mon, Sep 23, 2024 at 11:40 AM
To: docketsupervisor@azwater.gov

Dear Ms. Scantlebury:

I am writing in support of your proposed new rules regarding an Assured Water Supply for Pinal County.

I am not a Pinal County resident, but a strong supporter of the Podium Club at Attesa. The inability to get a required water certificate has stalled development at Arizona's premier race circuit and motorsports club, including the construction and sale of trackside homes, race shops, condos, and more. This issue has postponed jobs, tourism and growth. It has halted track expansion and upgrades necessary to host major, nationally televised race events.

A water rule change will release the brakes and let them build. Pinal County and Casa Grande will benefit.

I strongly encourage the approval and adoption of the new rules as soon as possible.

Sincerely Thomas Brawner

Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Tiffanie Grady-Gillespie <wickedfittgym@gmail.com> Mon, Sep 23, 2024 at 1:51 PM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>

RESIDENT

DATE 9/23/24
Dear Ms. Scantlebury:
As a resident of Pinal County, please accept this letter as my direct support for the new Assured Water Supply rules for Pinal County.
I appreciate all the efforts of the Governor's Office and thestaff at the Arizona Department of Water Resources (ADWR) for working to develop these new rules, which will certainly go a long way in building a more vibrant economy.
We all know how a stable water supply is crucial for maintaining strong property values, supporting businesses,and fostering overall economic health and a higher qualityof life in our community.
Thank you for pushing this solution forward.
Sincerely,
Tiffanie Gillespie

--
Tiffanie Grady-Gillespie
CPT , CCWC/ Certified Sports Nutrition Coach
Notary Public
WickedFiT ***422 N Florence St Suite 3*** *CG AZ 85122*
www.wickedfitt.com 520.450.1678

Dear Ms. Scantlebury,

As a resident of Pinal County, I am writing to express my strong support for the new Assured Water Supply rules. These rules are vital for ensuring a stable water supply, which is essential for maintaining property values, supporting businesses, and fostering economic growth in our community. I appreciate the efforts of the Governor's Office and the Arizona Department of Water Resources (ADWR) in developing this important initiative.

In addition to living in Gold Canyon, I am a member of the Podium Club at Attesa and am considering purchasing a second home near the racetrack. This track, designed to world-class standards, has the potential to attract high-visibility race teams and organizations such as the Fédération Internationale de l'Automobile (FIA) and the International Motor Sports Association (IMSA), which could significantly boost the local economy. In 2019, the global motorsports industry generated nearly $190 billion and supported 1.5 million jobs, highlighting its economic impact.

The future development of this community, including my interest in owning a home and race shop near the track, hinges on the approval of these new water rules. I strongly encourage their swift adoption to support both local growth and broader economic benefits.

Thank you for your leadership on this important issue.

Sincerely,

Tommy Felix
4072 S Last Chance Trl
Gold Canyon, AZ 85118

DATE: 09/23/2024

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new **Assured Water Supply** rules, which I believe will create a sustainable water supply in the Pinal AMA.

I would like to take this opportunity to express my direct support for the new rules and encouraging their adoption as soon as possible.

As a Pinal County business owner, I know it is important to have a vibrant economy that inspires growth and attracts more high quality workers who can become valued members of our community.

A stable water supply is crucial for maintaining strong property values, supporting businesses, and fostering the overall economic health and quality of life in our community.

I genuinely appreciate this initiative, as new water rules will mark a crucial step forward for all of Pinal County.

Sincerely,

NAME: Jack Roman

BUSINESS: Tuff Writer MFG LLC

VALLEY PARTNERSHIP

The Valley of the Sun's Premier Advocacy Group for Responsible Development

9/23/2024

Ms. Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, Arizona 85007

Re: Alternative Designation of Assured Water Supply Rules

Dear Ms. Scantlebury:

On behalf of Valley Partnership, representing 350 Company Partners and almost 2,000 Members, including the cities within Maricopa county as well as Maricopa County advocating for sustainable responsible development, we are writing in response to the Arizona Department of Water Resources (ADWR) draft Alternative Designation of Assured Water Supply (ADAWS) rules which offers a pathway for undesignated water providers to achieve a designation while providing a transition period during which the provider acquires new renewable resources and reduces their reliance on groundwater.

It is vitally important that as we continue to examine how potential ADAWS providers would enter and work through the process of acquiring new sustainable water sources to grow and reduce current groundwater use that we understand the benefits this will provide constituents throughout the Phoenix AMA. The users within the new ADAWS service area will be given an additional level of certainty by now being within a designation. But it is also important to note that within a designated provider's service area all water that is delivered is accounted for agnostic of use, so adding additional area within the Phoenix AMA served by an ADAWS will have a long-term benefit to the aquifer. Equally important is the signal of certainty that would be sent to our current residents as well as capital looking to invest in our community by not only having the ADAWS process but also service providers utilizing that process.

We all must acknowledge the real and near-term monetary costs that will be encountered by providers as they pursue an ADAWS and acquire additional resources as an ADAWS. We have all been confronted with the inflationary environment of the past few years and its impact on basic operations. This occurring at the same time providers are competing with others to acquire an ever-smaller amount of available wet water resources in our current uncertain world will only cause prices to rise. With price pressures being what they are, we should do all we can to ensure there are not overly burdensome regulations and continually support policy changes that impact the ability of water providers, both ADAWS and designated, to support smart growth policies that over time improve the health of the aquifer.

As a state we have already done this. Last legislative session SB1181 was signed into law, which provides greater flexibility for providers to collaborate with the Central Arizona Groundwater Replenishment District (CAGRD). This legislation was vital in helping providers with the fiscal impacts associated with ADAWS. While a proposal allowing the conversion of Agriculture-to-Urbanized uses did not become law last year, it was worked on by numerous stakeholders and is a good policy that needs to find a way forward. A number of potential ADAWS providers would directly benefit from the proposal while

again improving the long-term health of the aquifer for all residents within the Phoenix AMA. We also must not lose focus on the need to access additional sustainable water resources to all in Arizona and the Phoenix AMA. Not only is the success of ADAWS providers based on their ability to access these new resources, but as we continue to attract new residents and industries these resources will be required by designated providers as well. As we all are aware, the forces of supply and demand are as prominent in water markets as any other. The more we can do to ensure a healthy water market where wet water resources are available and accessible, the more controlled water increases will be.

In conclusion, Valley Partnership would like to thank ADWR and the Governor's Office for their work throughout the process of these draft ADAWS rules. We have appreciated the opportunity to provide feedback on the rules and their impact on our region. As stated earlier, these rules have the potential through an updated designation process to ensure that more Arizonans are receiving their water supplies from a designated provider. This provides current and future consumers additional certainty while improving the health of the aquifer, benefiting all current and future residents in our region. We must not lose focus on the benefits that we all receive through a successful ADAWS program utilized by a number of currently undesignated providers. This is why we must continue to work directly with these currently undesignated providers to better understand how the proposed rule would impact their ability to utilize the ADAWS proposal and what other proposals or variables could impact their success implementing the program. We look forward to continuing to work on this rule and other policies impacting the not only ADAWS providers but all providers as we confront our ever-evolving water future.

Sincerely,

Clark Princell

Clark Princell
President & CEO

Walton®

September 23, 2024

Ms. Sharon Scantlebury,
Docket Supervisor, Arizona Department of Water Resources
1110 W. Washington Street, Suite 310
Phoenix, Az 85007

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, we are expressing our direct support for the new rules and encourage their adoption as soon as possible.

As a major landowner holding existing Certificates of Assured Water Supply, these rules are important to us because the ADAWS protects and honors existing CAWS. The existing CAWS are not deleted, but rather placed in an inactive status. The ADAWS instead largely honors the "groundwater allowances" and "extinguishment credits" already pledged to existing CAWS by providing mechanisms for incorporating them into the ADAWS. Should the water provider be unable to maintain its Designation, the existing CAWS would be reactivated and provide the same level of land entitlement as without an ADAWS.

Once again, we appreciate the efforts of the Governor's Office and ADWR staff. These are an important step forward for all of Pinal County,

Sincerely,

Barry Dluzen
EVP Land (Arizona)
Walton Global

C: 480.276.6752
E: bdluzen@walton.com

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9/23/2024

Dear Ms. Scantlebury:

I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

While I am not a resident, I am a member of the Podium Club at Attesa, and a very frequent visitor to Casa Grande. The race track I love represents the first project at this unique master-planned, multi-use community. It only needs new water rules to begin development in earnest, which is especially important to me personally, as one reason I became a member is became I am interested in moving to a trackside home that I can own, or building a race shop at the track.

I appreciate all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) and encourage the approval and adoption of the new rules as soon as possible.

Sincerely,

Wesley & Marissa Hanson

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Authority: A.R.S. § 45-101 et seq.

Supp. 23-4

Editor's Note: The lowercase references to the Department Director and Department have been changed to title case for continuity in this Chapter (Supp. 22-1).

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Article 7, consisting of Sections R12-15-701 through R12-15-725, adopted effective February 7, 1995.

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* The computation of days is prescribed by R12-15-401(4).
** Hearing is required.

Historical Note

Adopted effective December 31, 1998; filed with the Office of the Secretary of State July 28, 1998 (Supp. 98-3). Table A amended by final rulemaking at 23 A.A.R. 2375, effective October 10, 2107 (Supp. 17-3). Table A amended by final expedited rulemaking at 28 A.A.R. 266 (January 28, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

ARTICLE 5. RESERVED

ARTICLE 6. RESERVED

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

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. "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. "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. "Central distribution system" means a water system that qualifies as a public water system pursuant to A.R.S. § 49-352.
19. "CERCLA" or "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" has the same meaning as prescribed in A.R.S. § 49-201.
20. "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. "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. "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. "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. "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. "County water augmentation authority" means an authority formed pursuant to A.R.S. Title 45, Chapter 11.
26. "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. "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. "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. "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. "Determination of adequate water supply" means a water report, a designation of adequate water supply, or an analysis of adequate water supply.
31. "Determination of assured water supply" means a certificate, a designation of assured water supply, or an analysis of assured water supply.

32. "Development" means either a subdivision or an unplatted development plan.
33. "Diversion works" means a structure or well that allows or enhances diversion of surface water from its natural course for other uses.
34. "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. "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. "Dry lot development" means a development or subdivision without a central water distribution system.
37. "EPA" means the United States Environmental Protection Agency.
38. "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. "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. "Extinguish" means to cause a grandfathered right to cease to exist through a process established by the Director pursuant to R12-15-723.
41. "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. "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. "Gray water" has the same meaning as provided in A.R.S. § 49-201.
44. "Gray water reuse system" means a system constructed to reuse gray water that meets the requirements of the rules adopted by ADEQ for gray water systems.
45. "Management plan" means a water management plan adopted by the Director according to A.R.S. § 45-561 et seq.
46. "Mandatory adequacy jurisdiction" means a city, town, or county that requires an adequate water supply determination by the Director as a condition of approval of a plat according to A.R.S. § 9-463.01(J) or (O) or A.R.S. § 11-823(A).
47. "Master-planned community" has the same meaning as provided in A.R.S. § 32-2101.
48. "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.
49. "Member land" has the same meaning as provided in A.R.S. § 48-3701.
50. "Member service area" has the same meaning as provided in A.R.S. § 48-3701.
51. "Multi-county water conservation district" means a district established according to A.R.S. Title 48, Chapter 22.
52. "Municipal provider" has the same meaning as provided in A.R.S. § 45-561.
53. "New municipal provider" means a municipal provider that began serving water for non-irrigation use after January 1, 1990.
54. "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. "Perennial" means a stream that flows continuously.
56. "Persons per household" means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.
57. "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. "Plat" means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.
59. "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. "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. "Proposed municipal provider" means a municipal provider that has agreed to serve a proposed subdivision.
62. "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.
63. "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. "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 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.
65. "Subdivision" has the same meaning as prescribed in A.R.S. § 32-2101.
66. "Superfund site" means the site of a remedial action undertaken according to CERCLA.
67. "Surface water" means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.
68. "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.
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 according to A.R.S. § 45-108 and this Article.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired. Amended by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final expedited rulemaking at 28 A.A.R. 909 (May 6, 2022), with an immediate effective date of April 11, 2022 (Supp. 22-2).

R12-15-702. Physical Availability Determination

A. A person may apply for a physical availability determination by submitting an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and providing the following information with the application:
1. The proposed source of water for which the applicant is seeking a determination of physical availability,
2. Evidence that the applicant has complied with subsection (C) of this Section, and
3. Any other information that the Director reasonably deems necessary to determine whether water is physically available in the area that is the subject of the application.

B. Each applicant shall sign an application for a physical availability determination. 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 the 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 determination, the authorized representative may sign the application on the applicant's behalf.

C. An applicant for a physical availability determination shall demonstrate the following:
1. The volume of water that is physically available for 100 years in the area that is the subject of the application, according to the criteria in R12-15-716.
2. That the proposed sources of water will be of adequate quality, according to the criteria in R12-15-719.

D. After a complete application is submitted, the Director shall review the application and associated evidence to determine whether the applicant has demonstrated all of the criteria in subsection (C) of this Section. If the Director determines that the applicant has demonstrated all of the criteria in subsection (C) of this Section, the Director shall issue a physical availability determination.

E. Any person applying for a determination of assured water supply or a determination of adequate water supply may use an existing physical availability determination for purposes of R12-15-716. The Director shall consider any changes in hydrologic conditions for purposes of R12-15-716.

F. The issuance of a physical availability determination does not reserve any water for purposes of this Article.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2).

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-703. Analysis of Assured Water Supply

A. A person proposing to develop land that will not be served by a designated provider may apply for an analysis of assured water supply before applying for a certificate. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona or may consent to the inclusion of such land in an application.

B. An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and attach 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 submitted, demonstrating the ownership of the land that is the subject of the application;
2. A description of the development, including:
   a. A map of the land uses included in the development,
   b. A list of water supplies proposed to be used by the development,
   c. A summary of land use types included in the development, and
   d. An estimate of the water demand for the land uses included in the development; and
3. Evidence that the applicant has complied with subsection (E) of this Section.

C. An applicant shall sign the application for an analysis. 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 the 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 analysis, the authorized representative may sign the application on the applicant's behalf.

D. After a complete application is submitted, the Director shall determine the estimated water demand of the development.

E. The Director shall issue an analysis if an applicant demonstrates one or more of the following:

1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716.
2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717.
3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, 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. 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.
6. Any proposed groundwater use is consistent with the management goal, according to the criteria in R12-15-722.

F. For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:

1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1) of this Section, the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
2. If an analysis holder applies for a certificate for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the certificate, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the certificate that will be met with groundwater.

G. The Director shall reduce the amount of groundwater considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the name of the person's designee for purposes of this subsection.

H. The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:

1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
2. The analysis holder has made material progress in developing the land included in the analysis.
3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.

I. After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (2), or (3) of this Section.

J. The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired. Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-703.01. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 3038, effective June 18, 2001 (Supp. 01-2). Section repealed by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-704. Certificate of Assured Water Supply

A. An application for a certificate shall be filed by the current owner of the land that is the subject of the application. Potential purchasers and affiliates may also be included as applicants.

B. An applicant for a certificate shall submit an application on a form prescribed by the Director with the fee required by R12-15-103(C) and provide the following:

1. One of the following forms of proof of ownership for each applicant to be listed on the certificate:
   a. For an applicant that is the current owner, one of the following:
      i. 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, demonstrating that the applicant is the owner of the land that is the subject of the application; or
      ii. Evidence that the CAGRD has reviewed and approved evidence that the applicant is the owner of the land that is the subject of the application.
   b. For an applicant that is a potential purchaser, evidence of a purchase agreement;
   c. For an applicant that is an affiliate of another applicant, a certification by the other applicant of the affiliate status;
2. A plat of the subdivision;
3. An estimate of the 100-year water demand for the subdivision;
4. If the subdivision is enrolled as a member land in the CAGRD and the applicant proposes to install gray water reuse systems in the subdivision, sufficient information for the Director to determine the appropriate reduction in demand;
5. A list of all proposed sources of water that will be used by the subdivision;
6. Evidence that the criteria in subsection (F) or (G) are met; and
7. Any other information that the Director reasonably determines is necessary to decide whether an assured water supply exists for the subdivision.

C. Each applicant shall sign the application for a certificate. 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 certificate, the authorized representative may sign the application on the applicant's behalf.

D. The Director shall give public notice of an application for a certificate as provided in A.R.S. § 45-578.

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. If the subdivision is enrolled in the CAGRD and the applicant demonstrates that gray water reuse systems will be installed in the subdivision, the Director shall reduce the estimated water demand of the subdivision by the volume the Director determines is likely to be saved through the gray water reuse systems;
2. The amount of the groundwater allowance for the subdivision, as provided in R12-15-724 through R12-15-727; and
3. Whether the applicant has demonstrated all of the requirements in subsection (F) or (G).

F. Except as provided in subsection (G), the Director shall issue a certificate 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 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 for the subdivision, according to the criteria in R12-15-720;
6. The proposed use of groundwater withdrawn within an AMA is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
7. The proposed use of groundwater withdrawn within an AMA is consistent with the achievement of the management goal, according to the criteria in R12-15-722.

G. If the Director previously issued a certificate for the subdivision, the Director shall issue a new certificate to the applicant if the applicant demonstrates that all of the requirements in subsection (F) are met or that all of the following apply:
1. Any changes to the plat for which the previous certificate was issued are not material, according to the criteria in R12-15-708;
2. If groundwater is a proposed source of supply for the subdivision, the proposed groundwater withdrawals satisfied the physical availability requirements in effect at the time the complete and correct application for the previous certificate was submitted;
3. Any proposed sources of water, other than groundwater, are physically available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-716;
4. Any proposed sources of water other than groundwater are continuously available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-717;
5. The proposed uses of groundwater withdrawn within an AMA were consistent with the achievement of the management goal according to the criteria in effect at the time the complete and correct application for the previous certificate was submitted; and
6. The applicant demonstrates that the requirements in subsections (F)(3) through (6) are met.

H. Before issuing a certificate, the Director shall classify the certificate for the purposes of R12-15-705 and R12-15-706 as follows:
1. Type A certificate. The Director shall classify the certificate as a Type A certificate if the applicant meets the criteria in R12-15-720(A)(1) and all of the subdivision's estimated water demand will be met with one or more of the following:
   a. Groundwater served by a proposed municipal provider pursuant to an existing service area right;
   b. Groundwater served by a proposed municipal provider pursuant to a pending service area right, if the proposed municipal provider currently holds or will hold the well permit;
   c. CAP water served by a municipal provider pursuant to the proposed municipal provider's non-declining, long-term municipal and industrial subcontract;
   d. Surface water served by a proposed municipal provider pursuant to the proposed municipal provider's surface water right or claim;
   e. Effluent owned and served by a proposed municipal provider; or
   f. A Type 1 grandfathered right appurtenant to the land on which the groundwater will be used and held by a proposed municipal provider.
2. Type B certificate. The Director shall classify all certificates that do not meet the requirements of subsection (H)(1) as Type B certificates.

I. The Director shall review an application for a certificate pursuant to the licensing time-frame provisions in R12-15-401.

J. An owner of six or more lots is not required to obtain a certificate if all of the following apply:
1. The lots comprise a subset of a subdivision for which:
   a. A plat was recorded before 1980; or
   b. A certificate was issued before February 7, 1995;
2. No changes were made to the plat since February 7, 1995; and
3. Water service is currently available to each lot.

K. A new owner of all or a portion of a subdivision for which a plat has been recorded is not required to obtain a certificate if all of the following apply:
1. The Director previously issued a Type A certificate for the subdivision pursuant to subsection (H)(1) or R12-15-707;
2. Water service is currently available to each lot; and
3. There are no material changes to the plat for which the certificate was issued, according to the criteria in R12-15-708.

L. An owner of six or more lots in the Pinal AMA is not required to obtain a certificate if all of the following apply:
1. A plat for the subdivision was recorded before October 1, 2007;
2. There have been no material changes to the plat according to the criteria in R12-15-708, since October 1, 2007;
3. The proposed municipal provider was designated as having an assured water supply when the plat was recorded, but is no longer designated as having an assured water supply; and
4. Water service is currently available to each lot.

M. A person may request a letter stating that the owner is not required to obtain a certificate pursuant to subsection (J), (K), or (L) by submitting an application on a form prescribed by the Director and attaching evidence that the criteria of subsection (J), (K), or (L) 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 of subsection (J), (K), or (L) are met.

3. If the Director determines that the criteria of subsection (J) are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner is not required to obtain a certificate.
4. If the Director determines that the criteria of subsection (K) or (L) are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner and any future owners are not required to obtain a certificate.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2). Amended by final expedited rulemaking at 28 A.A.R. 909 (May 6, 2022), with an immediate effective date of April 11, 2022 (Supp. 22-2).

R12-15-705. Assignment of Type A Certificate of Assured Water Supply

A. The certificate holder of a Type A certificate and the assignee may apply for approval of an assignment of the Type A certificate within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the applicant shall provide the following:

1. One of the following forms of proof of ownership for each assignee:
   a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner of the land that is the subject of the proposed assignment; or
   b. If the assignee is a potential purchaser, evidence of a purchase agreement;
2. A current plat of the subdivision;
3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
4. Certification by each applicant that:
   a. The proposed municipal provider has not changed and has agreed to continue to serve the subdivision after the assignment; and
   b. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment.

B. Each applicant shall sign the application for an assignment of a Type A certificate. If an applicant is not a natural person, the entity'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 included in the certificate, the authorized representative may sign the application on behalf of the applicant.

C. Upon receiving an application for an assignment of a Type A certificate, the Director shall post the notice required by A.R.S. § 45-579(E).

D. If the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type A certificate to each applicant. A Type A certificate issued under this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (E) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:

1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
2. The assignee is the owner or a potential purchaser of the portion of the subdivision that is the subject of the assignment;
3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
4. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and
5. The applicant makes the certifications required in subsection (A)(4) of this Section.

E. In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type A certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type A certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate being assigned.

F. The Director shall review an application for an assignment of a Type A certificate of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 4390, effective November 22, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-706. Assignment of Type B Certificate of Assured Water Supply

A. The certificate holder of a Type B certificate or a certificate issued before the effective date of this Section that has not been classified pursuant to R12-15-707 and the assignee may apply for approval of an assignment of the certificate to another person within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the applicant shall provide the following:

1. One of the following forms of proof of ownership for each assignee:
   a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner of the land that is the subject of the proposed assignment; or
   b. If the assignee is a potential purchaser, evidence of a purchase agreement;
2. A current plat of the subdivision;
3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
4. Evidence that all necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
5. Evidence that the assignee has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
6. Evidence that all water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
7. Evidence that the proposed municipal provider has not changed and has agreed to serve the subdivision after the assignment;
8. If the applicant requests that the Director classify the certificate pursuant to subsection (E) of this Section, evidence that the requirements of R12-15-704(H)(1) are satisfied;
9. Any other information that the Director reasonably deems necessary to determine whether the application meets the criteria of A.R.S. § 45-579.

B. Each applicant shall sign the application for an assignment of a certificate. If an applicant is not a natural person, the entity'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 certificate, the authorized representative may sign the application on the applicant's behalf.

C. Upon receiving an application for an assignment, the Director shall post the notice required by A.R.S. § 45-579(E).

D. Except as provided in subsection (E) of this Section, if the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type B certificate to each applicant. A Type B certificate issued under this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (F) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:

1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
2. The assignee is the owner or potential purchaser of the portion of the subdivision that is the subject of the assignment;
3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
4. The applicant demonstrates the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
5. All necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
6. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
7. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and
8. The proposed municipal provider has agreed to serve the subdivision after the assignment.

E. The applicant may include in the application a request to classify the certificate as a Type A certificate. If the Director determines that the request meets the requirements of R12-15-704(H)(1), the Director shall classify the certificate as a Type A certificate.

F. In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type B certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type B certificate to the certificate holder for the portion of the subdivision retained by the certif-

icate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate that is being assigned.

G. The Director shall review an application for an assignment of a Type B certificate pursuant to the licensing time-frame provisions in R12-15-401.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-707. Application for Classification of a Type A Certificate

A. A holder of a Type B certificate or a certificate issued before the effective date of this Section may apply to the Director to classify the certificate as a Type A certificate by submitting an application on a form prescribed by the Director with the initial fee prescribed in R12-15-103(C), and attaching evidence that the certificate meets the requirements of R12-15-704(H)(1).

B. At least one certificate holder shall sign the application for classification of a certificate as a Type A certificate. If the 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 the 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 certificate, the authorized representative may sign the application on behalf of the applicant.

C. If the applicant demonstrates that the requirements of R12-15-704(H)(1) are met, the Director shall classify the certificate as a Type A certificate and issue a Type A certificate to each certificate holder.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-708. Material Plat Change; Application for Review

A. A certificate or a water report is applicable to the original plat for which the certificate or water report was issued and to a revised plat, unless the plat changes are material according to subsections (C) and (D).

B. If a plat is revised after the Director issues a certificate or a water report and the changes to the plat are material according to subsection (C) or (D), the holder may:

1. Apply for a new certificate or water report for the revised plat,
2. Use the original plat for which the certificate or water report was issued, or
3. Revise the plat so that any changes are not material according to subsections (C) and (D).

C. Changes to the plat for which a certificate or a water report has been issued are material if any of the following apply:

1. The 100-year water demand for the revised plat equals the 100-year water demand for the certificate or water report and the number of lots on the plat has increased by more than:
   a. For subdivisions of six to 10 lots: one lot;
   b. For subdivisions of 11 to 499 lots: 10%, rounding up to the nearest whole number; or
   c. For subdivisions of 500 lots or more: 50 lots.
2. The 100-year water demand for the revised plat exceeds the estimated water demand for the certificate or water report, unless all of the following apply:
   a. The 100-year water demand for the revised plat does not exceed the estimated water demand for the certificate or water report by more than 10%, rounding to the nearest whole acre-foot, or by more than 25 acre-feet per year, whichever is less;
   b. The 100-year water demand is not greater than the supply demonstrated to be physically, continuously, and legally available at the time of issuance of the certificate or water report, and that water supply remains physically, continuously, and legally available; and
   c. For a certificate, one of the following applies:
      i. The subdivision is enrolled as a member land in the CAGRD;
      ii. Groundwater is not included as a source of supply; or
      iii. The subdivision is located in the Pinal AMA and the 100-year water demand for the revised plat will not exceed the sum of the amount of the groundwater allowance and the amount of any extinguishment credits pledged to the certificate, including extinguishment credits pledged after the certificate was issued.
   d. The number of lots on the revised plat has not increased by more than:
      i. For subdivisions of six to 10 lots: one lot;

ii. For subdivisions of 11 to 499 lots: 10%, rounding up to the nearest whole number; or
iii. For subdivisions of 500 or more: 50 lots.

3. For a certificate, additional land is included in the plat, unless all of the following apply:
   a. The land included in the original plat for which the certificate was issued is located in a master-planned community;
   b. The outer boundaries of the master-planned community have not expanded;
   c. If the land included in the original plat for which the certificate was issued is enrolled as a member land in the CAGRD, the additional land has also been enrolled in the CAGRD; and
   d. A certificate has been issued for the additional land.

D. Changes to a portion of a plat are not material if one of the following applies:
1. The changes to the portion of the plat being reviewed are not material according to subsection (C) when compared to the equivalent portion of the plat for which the certificate was issued;
2. The changes to the entire revised plat are not material according to subsection (C) when compared to the entire plat for which the certificate was issued; or
3. For a partial assignment pursuant to R12-15-705 or R12-15-706, the plat for the portion of the subdivision retained by the certificate holder could be configured so that changes to the total number of lots and the estimated water demand for the entire subdivision, including the portion under consideration, are not material according to subsection (C). For purposes of this subsection, the Director may require the applicant to submit evidence demonstrating whether changes to the plat are material. However, the Director shall not require the applicant to submit a plat for the retained portion of a subdivision, unless the materiality of changes to the plat cannot be determined with any other evidence.

E. A person may apply for a review of a revised plat to determine whether any changes to the plat are material as follows:
1. The applicant shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and shall attach the revised plat.
2. The Director shall review the revised plat and the plat for which the certificate or water report was originally issued to determine whether any changes are material according to the criteria in subsections (C) and (D).
3. The Director shall issue a letter to the applicant stating whether any changes to the plat are material and identifying which changes, if any, are material. If the Director determines that the changes to the plat are not material, the Director's letter shall state that the certificate or water report is applicable to the revised plat.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2). Amended by final expedited rulemaking at 28 A.A.R. 909 (May 6, 2022), with an immediate effective date of April 11, 2022 (Supp. 22-2).

R12-15-709. Certificate of Assured Water Supply; Revocation

A. The Director may revoke a certificate if an assured water supply does not exist.

B. The Director shall not revoke a certificate if any of the residential lots within the plat have been sold.

C. If the Director determines that a certificate should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10. To determine whether a certificate should be revoked, the Director shall use the standards in place at the time the original application was submitted for the certificate.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-710. Designation of Assured Water Supply

A. A municipal provider applying for a designation of assured water supply shall submit an application on a form prescribed by the Director with the fee required by R12-15-103(C) and provide 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. If the applicant is seeking a reduction in the estimated water demand because gray water reuse systems will be installed, sufficient information for the Director to determine the appropriate reduction in demand;
5. The proposed term of the designation, which shall not be less than two years;
6. Evidence that the criteria in subsection (E) are met; and
7. Any other information that the Director determines is necessary to decide whether an assured water supply exists for the municipal provider.

B. 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.

C. The Director shall give public notice of an application for designation in the same manner as provided for certificates in A.R.S. § 45-578. For an application to modify a designation of assured water supply to which subsection (G) applies, the physical availability of the groundwater and stored water to be recovered outside the area of impact of storage sought to be included in the designation shall not be grounds for an objection.

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

1. The annual volume of water 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 applicant's estimated water demand. If the applicant demonstrates that gray water reuse systems will be installed, the Director shall reduce the estimated water demand for the subdivision by the volume the Director determines is likely to be saved through the gray water reuse systems;
4. The applicant's groundwater allowance; and
5. Whether the applicant has demonstrated compliance with all requirements in subsection (E).

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, except as provided in subsection (G);
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. The Director shall review an application for a designation of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

G. For an application seeking to modify a designation of assured water supply, 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 according to 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.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2). Amended by final expedited rulemaking at 28 A.A.R. 909 (May 6, 2022), with an immediate effective date of April 11, 2022 (Supp. 22-2).

R12-15-711. Designation of Assured Water Supply; Annual Report Requirements, Review, Modification, Revocation

A. A designated provider shall include in the annual report required by A.R.S. § 45-632 the following information for the preceding calendar year:

1. The designated provider's committed demand;
2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
3. A report regarding the designated provider's compliance with water quality requirements;
4. The depth-to-static water level of all wells from which the designated provider withdrew water; and
5. Any 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.

B. If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.

C. The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked. To determine whether the designation should be modified or revoked, the Director shall use the standards in place at the time of review.

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.

E. A designated provider may request a modification of the designation at any time pursuant to R12-15-710.

F. The Director may revoke a designation if:

1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-710(E), than the amount required for a 100-year supply for the provider's:
   a. Current demand,
   b. Committed demand, and
   c. Projected demand during the next two calendar years;
2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner;
3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
4. The designated provider has violated its management plan requirements for two or more consecutive calendar years, and one of the following applies:
   a. The provider fails to amend its water use plan in a manner that the Director determines will achieve compliance, or
   b. The provider fails to sign a stipulated agreement to remedy the violation.

G. If the Director determines that a designation of assured water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.

H. If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.

I. Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-712. Analysis of Adequate Water Supply

A. A person proposing to develop land outside an AMA that will not be served by a designated provider may apply for an analysis of adequate water supply before applying for a water report. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona outside an AMA or may consent to the inclusion of such land in an application.

B. An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and attach 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 submitted to the Director, demonstrating the ownership of the land that is the subject of the application;
2. A description of the development, including:
   a. A map of the land uses included in the development,
   b. A list of water supplies proposed to be used by the development,
   c. A summary of land use types included in the development, and
   d. An estimate of the water demand for the land uses included in the development; and
3. Evidence that the applicant has complied with subsection (E) of this Section.

C. An applicant shall sign the application for an analysis. 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 the 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 that is the subject of the water report, the authorized representative may sign the application on the applicant's behalf.

D. After a complete application is submitted, the Director shall determine the estimated water demand of the development.

E. The Director shall issue an analysis if an applicant demonstrates one or more of the following:

1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716;
2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717;
3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, 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.

F. For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:

1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1), the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
2. If an analysis holder applies for a water report for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the water report, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the water report that will be met with groundwater.

G. The Director shall reduce the amount of water considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the person's designee for purposes of this subsection.

H. The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:

1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
2. The analysis holder has made material progress in developing the land included in the analysis.
3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.

I. After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (2), or (3) of this Section.

J. The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

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 initial fee required by R12-15-103(C), 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) 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. 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).

E. 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. The Director shall issue a water report to the applicant that states whether the applicant has complied with the requirements in subsection (E).

G. The Director shall review an application for a water report pursuant to the licensing time-frame provisions in R12-15-401.

H. The Director may review or modify a water report if the Director receives new evidence regarding the criteria in subsection (E). 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. 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). 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. A water report is subject to the provisions of R12-15-708.

K. An owner of a subdivision that is located within a mandatory adequacy jurisdiction and that will be served Colorado River water by a municipal provider may apply for an exemption from the requirement to obtain an adequate water supply determination from the director or a commitment of water service from a designated provider according to A.R.S. § 45108.03(A)(1)(b) by submitting an application on a form prescribed by the Director and demonstrating that the criteria in subsection (K)(2) are met. Upon receiving an application according to this subsection, the Director shall:

1. Review the application according 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 will serve Colorado River water to the subdivision and the municipal provider does not currently have the legal right to serve the 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 the Colorado River water to the subdivision within 20 years;
   d. An interim water supply will be used to serve the subdivision until the municipal provider has the legal right to serve the Colorado River water to the subdivision and the interim water supply meets all of the criteria in subsection (E), 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 the Colorado River water to the subdivision, the Colorado River water supply will meet all of the criteria in subsection (E).
3. If the Director determines that the criteria of subsection (K)(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 an adequate water supply determination from the director or a commitment of water service from a designated provider.

L. An owner of a subdivision that is located within a mandatory adequacy jurisdiction and that will be served by a water supply project under construction may apply for an exemption from the requirement to obtain an adequate water supply determination from the director or a commitment of water service from a designated provider according to A.R.S. § 45-108.03(A)(1)(a) by submitting an application on a form prescribed by the Director and demonstrating that the criteria in subsection (L)(2) are met. Upon receiving an application according to this subsection, the Director shall:

1. Review the application according 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 20 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 (E), except that supply will be available for the interim period and not for 100 years; and
   d. When the physical works for delivering water to the subdivision are fully constructed, the water supply will meet all of the criteria in subsection (E).
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 an adequate water supply determination from the director or a commitment of water service from a designated provider.

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2). Amended by final expedited rulemaking at 28 A.A.R. 909 (May 6, 2022), with an immediate effective date of April 11, 2022 (Supp. 22-2).

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 initial fee required by R12-15-103(C), 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 initial fee required in R12-15-103(C), 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. 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.

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

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation

A. By March 31 of each calendar year, a designated provider shall submit the following information for the preceding calendar year on a form provided by the Director:

1. The designated provider's committed demand;
2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
3. A report regarding the designated provider's compliance with water quality requirements;
4. The depth-to static water level of all wells from which the designated provider withdrew water;
5. A report regarding volume of water withdrawn, diverted, or received from each source for delivery to customers;
6. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of adequate water supply.

B. If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.

C. The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked.

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 designated provider may request a modification of the designation at any time pursuant to R12-15-714. To determine whether the designation should be modified, the Director shall use the standards in place at the time of review.

E. The Director may revoke a designation if:

1. After notifying the designated provider and initiating a review of the designated provider's status, the Director deter mines that the designated provider has less water, according to the criteria in R12-15-714(E), than the amount required for a 100-year supply for the provider's:
   a. Current demand,
   b. Committed demand, and
   c. Projected demand for the next two calendar years;
2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner; or
3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance.

F. To determine whether the designation should be revoked, the Director shall use the standards in place at the time of review. If the Director determines that a designation of adequate water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.

G. If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.

H. Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

Historical Head

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

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) of this Section.

B. If the proposed source is 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. Except as provided in subsection (D) 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 subsection (C) 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 developments	1200 feet below land 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. 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 lower the maximum 100-year depth-to-static water level requirement specified in subsection (B)(2) of this Section for an applicant seeking a determination of adequate water supply if the applicant demonstrates both of the following:
1. Groundwater is available at the lower depth; and
2. The applicant has the financial capability to obtain the groundwater at the lower depth, according to the criteria in R12-15-720.

D. 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.

E. Subject to subsection (L) 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 pro-

jected 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. Subject to subsection (L) 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) 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. Subject to subsection (L) 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) 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. Subject to subsection (I) 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. 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) 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) 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. 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. 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. 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 CAGRD.
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.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-717. Continuous Availability

A. The Director shall determine that an applicant will have sufficient supplies of water that will be continuously available for 100 years if the applicant submits sufficient evidence that adequate delivery, storage, and treatment works will be in place in a timely manner to make the water available to the applicant or the applicant's customers for 100 years and the applicant meets any applicable requirements in subsections (B) through (G) of this Section.

B. If the proposed source of water is groundwater, the applicant shall demonstrate that wells of a sufficient capacity will be constructed in a timely manner to serve the proposed uses on a continuous basis for 100 years.

C. If the proposed source of water is surface water other than CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply will exist because of one or more of the following:

1. The projected volume to be diverted from the source is perennial at the point of diversion;
2. Adequate storage facilities will be available to the applicant in a timely manner to store water for use when a volume of surface water is not available at the point of diversion to satisfy the applicant's water demands;
3. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to supplement the applicant's proposed surface water supplies;
4. The applicant or the proposed municipal provider will withdraw surface water from wells of sufficient capacity to meet the applicant's estimated water demand on a continuous basis for 100 years; or
5. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume of water that is subject to drought.

D. If the proposed source of water is CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply is available because of one or more of the following:

1. Adequate storage facilities will be available to the applicant in a timely manner to store water when a volume of CAP water or Colorado River water is not available to meet the applicant's water demands;
2. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to the applicant to supplement the proposed CAP water or Colorado River water supplies; or
3. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume subject to drought.

E. If the proposed source of water is effluent, the applicant shall demonstrate that the capability to use the effluent to meet the demands of the proposed use will not be affected by any fluctuations in the supply of the effluent.

F. If the proposed source of water is stored water to be recovered from recovery wells, the applicant shall demonstrate that recovery wells of a sufficient capacity will be constructed in a timely manner to serve the proposed use on a continuous basis for 100 years.

G. If an applicant will obtain the source of water through a water exchange agreement, the applicant shall demonstrate that the source of water the applicant or the applicant's customers will use will be continuously available in accordance with the terms of this Section.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired. Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-718. Legal Availability

A. The Director shall determine that an applicant will have sufficient supplies of water that will be legally available for at least 100 years if the applicant submits all of the applicable information required by this Section.

B. If the applicant is an applicant for a certificate or a water report, the applicant shall submit the following, as applicable:

1. A Notice of Intent to Serve agreement between the owner of the land to be included in the subdivision and the proposed municipal provider, stating the proposed municipal provider's intent to serve the subdivision;
2. If the proposed municipal provider is a city or town, evidence indicating that the proposed subdivision is located within the incorporated limits of the city or town or evidence of the legal right of the city or town to serve water to the subdivision outside the city or town's incorporated limits; or
3. If the proposed municipal provider is a private water company, one of the following:
   a. Evidence that the proposed municipal provider has a certificate of convenience and necessity approved by the Arizona Corporation Commission and the subdivision is located within the geographic area described in the certificate of convenience and necessity or any other area in which the Arizona Corporation Commission authorizes the private water company to serve water;
   b. Evidence that the proposed municipal provider has an order preliminary issued by the Arizona Corporation Commission authorizing the municipal provider to provide water service and the proposed subdivision is located within the area described in the order preliminary; or
   c. Evidence that the proposed municipal provider is not a public service corporation regulated by the Arizona Corporation Commission.

C. If the applicant is a private water company applying for a designation, the applicant shall submit evidence that the applicant has a certificate of convenience and necessity approved by the Arizona Corporation Commission, or has been issued an order preliminary by the Arizona Corporation Commission for a certificate of convenience and necessity, authorizing the applicant to serve the proposed use.

D. If a proposed source of water is groundwater to be withdrawn within an AMA, the applicant shall submit evidence that the applicant or the proposed municipal provider has one or more of the following:

1. A service area right;
2. An applicable non-irrigation grandfathered right to withdraw groundwater, in an amount sufficient to serve the proposed use; or
3. A pending notice of intent to establish a new service area and all of the following apply:
   a. The notice of intent to establish a new service area identifies the proposed subdivision,
   b. The applicant or the proposed municipal provider has obtained a permit for any wells used to establish the service area right,
   c. The proposed municipal provider has obtained a water right or recovery well permit to establish the service area right, and
   d. The water right is of sufficient volume and duration to meet the estimated water demand of the proposed subdivision until the anticipated date of issuance of a service area right.

E. If a proposed source of water is surface water other than CAP water or Colorado River water:

1. The applicant shall submit evidence that the applicant or the proposed municipal provider has a certificated surface water right, decreed water right, or a pre-1919 claim for the proposed source. If the applicant or the proposed municipal provider does not hold a surface water right or claim, but will receive water pursuant to a water right or claim that is appurtenant to the land that is the subject of the application, the applicant shall submit evidence of the water right or claim and evidence that the water right or claim may neither be legally withheld nor severed and transferred by the right holder or claimant.
2. If the certificated surface water right or decreed water right pre-dates the date of application by at least five years, or the applicant submits a pre-1919 claim, the applicant shall submit one of the following:
   a. Evidence that the surface water supply has been used pursuant to the applicable water right or claim within the five years before the date of application;
   b. Evidence that a court has determined that the right has not been abandoned; or
   c. Evidence that the non-use would not have resulted in an abandonment of the right pursuant to A.R.S. § 45-189.
3. The Director shall determine that the volume of water that is legally available pursuant to a certificated surface water right, a decreed water right, or a pre-1919 claim is equal to the face value of the right or claim. If the right or claim is subsequently adjudicated, the Director shall determine the volume of water that is legally available based on the adjudicated amount of water.

F. Subject to subsections (M) and (N) of this Section, if a proposed source of water is CAP water, the applicant shall submit evidence that the applicant or the proposed municipal provider has entered into a subcontract with a multi-county water conservation district for the proposed volume of CAP water. The Director shall presume that a 50-year long-term, non-declining municipal and industrial subcontract is sufficient evidence of the legal availability of the volume of CAP water specified in the subcontract for 100 calendar years.

G. Subject to subsections (M) and (N) of this Section, if a proposed source of water is Colorado River water, the applicant shall submit evidence of one of the following:

1. The applicant or the proposed municipal provider has a contract with the United States Secretary of the Interior for the proposed supply; or
2. The applicant has obtained an allocation of Colorado River water from an entity to which all of the following apply:
   a. The entity holds a contract for Colorado River water with the United States Secretary of the Interior;
   b. The entity provides Colorado River water to the proposed municipal provider;
   c. The entity has allocated a sufficient volume of the Colorado River water to the subdivision; and

d. The area that the entity may serve, described in the contract with the United States Secretary of the Interior, includes the subdivision.

H. If a proposed source of water is effluent, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the effluent.

I. If the applicant will obtain a proposed source of water through a written contract other than a water exchange agreement, a contract between a certificate applicant and the municipal provider proposed to serve the applicant, a contract with the United States Secretary of the Interior for Colorado River water, or a subcontract with a multi-county water conservation district, the applicant shall submit evidence that the person providing the water under the contract has a legal right to the water in accordance with the terms of this Section and that the terms of the contract will ensure that the proposed source of water will be delivered to the applicant or to the proposed subdivision. The Director shall determine the term of years for which the proposed source of water is legally available based on the term of years remaining in the contract. The Director shall determine the quantity of water legally available based on the volume established in the contract.

J. If the applicant will obtain a proposed source of water through a water exchange agreement, the applicant shall submit evidence that the water exchange agreement satisfies the requirements of A.R.S. Title 45, Chapter 4.

K. If the Director can determine the proposed source of water to be physically and continuously available only because of the use of storage facilities by the applicant or by the proposed municipal provider, the applicant shall submit evidence of the applicant's or the proposed municipal provider's legal right to store water in the storage facilities.

L. If the applicant proposes to use long-term storage credits, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the credits under A.R.S. Title 45, Chapter 3.1.

M. If a proposed supply of water is Colorado River water or CAP water leased from an Indian community, the applicant shall submit evidence that the water leased has a priority equal to or higher than CAP municipal and industrial water, evidence that the Indian community is expressly authorized by an Act of Congress to lease the water for use off Indian community lands, evidence of the lease, and evidence of one of the following:

1. The proposed water supply is available under the lease for at least 100 years from any time during the year in which the applicant submits the application.
2. The term of the lease has less than 100 years remaining in the year in which the applicant submits the application and a supplemental water supply, together with the leased water, provides a 100-year water supply. The applicant shall demonstrate that the supplemental water supply is physically, continuously, and legally available and, if such supplemental supply is groundwater, that use of the groundwater is consistent with the management goal of the AMA. If the supplemental supply is water recovered through the use of long-term storage credits, the applicant shall also submit the following, as applicable:
   a. If the applicant is to use the long-term storage credits before the beginning of the lease term, evidence that the applicant or the proposed municipal provider has obtained a recovery well permit that allows the applicant or the proposed municipal provider to recover water pursuant to the long-term storage credits; or
   b. If the long-term storage credits will be accrued in the future, evidence that the applicant or the proposed municipal provider will accrue the long-term storage credits within 20 years after the effective date of the designation, certificate, or water report by storing the water under an issued water storage permit at a permitted storage facility and that no more than 20 years of the applicant's supplemental water supply will be provided by the long-term storage credits.

N. If the Director previously determined that Colorado River water or CAP water leased from an Indian community was legally available to a designated provider for 100 years, the Director shall determine that the designated provider continues to have a legally available supply of water for 100 years for the annual amount of water available under the lease if:

1. The lease has at least 50 years remaining in its term or the lease has at least 40 years remaining in its term and the designated provider submits evidence to the Director of active and ongoing negotiations with the Indian community to renew or re-negotiate the lease; and
2. One of the following applies:
   a. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
   b. Groundwater will be physically, continuously, and legally available to the designated provider at the end of the lease term to substitute for the leased water for the remainder of the 100-year period, and the projected use of groundwater is consistent with the management goal of the AMA. For purposes of this subsection, the designated provider may demonstrate that the proposed use is consistent with the management goal by entering into a written agreement with the Director under which the designated provider agrees to replace through replenishment or underground storage any groundwater used at the end of the lease term if groundwater use is not consistent with the management goal. The written agreement shall provide that specific performance is the only remedy in the event of default;
   c. A non-groundwater source of water will be physically, continuously, and legally available at the end of the lease term to substitute for the leased water for the remainder of the 100-year period; or
   d. The designated provider's governing board or council submits a resolution requesting that the designated provider be allowed to increase its projected use of Indian lease water from 15%, as allowed by subsection (N)(2)(a) of this Section, to 20%, and the Director finds that all of the following apply:

i. No more than 20% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
ii. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through any single lease with an Indian community; and
iii. The designated provider does not meet the requirements of subsections (N)(2)(a), (b), or (c) of this Section.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-719. Water Quality

A. Except as provided in subsection (B) of this Section, when reviewing an application for a determination of assured water supply or a determination of adequate water supply, the Director shall determine that the water supply is of adequate quality if one of the following applies:
1. The applicant certifies on the application that the applicant or the proposed municipal provider will be regulated by ADEQ, or another governmental entity with equivalent jurisdiction, as a public water system pursuant to A.R.S. § 49-351, et seq., unless ADEQ, or another governmental entity with equivalent jurisdiction, has determined, after notice and an opportunity for a hearing, that the public water system is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
2. The applicant has submitted results of a lab analysis demonstrating that the water meets water quality requirements in accordance with A.A.C. Title 18, Chapter 4, or that the water will meet these requirements after treatment that is required by law. The lab analysis shall be based on water withdrawn from a well representative of the well or wells from which water will be withdrawn for the proposed use, conducted in compliance with sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, and completed within 60 days of the date the application is submitted to the Director. If ADEQ waives any of the water quality or sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, the Director shall not require the applicant to meet the waived requirements.

B. If a well or a proposed well from which water will be withdrawn for the proposed use is located within one mile of a WQARF site or Superfund site, the Director shall determine that the water supply is of adequate quality only if the applicant submits a contaminant migration and mitigation analysis, demonstrating that the water supply will continue to meet the requirements in A.A.C. Title 18, Chapter 4 for 100 years. The contaminant migration and mitigation analysis may include the impact of any mitigation or treatment, including mitigation or treatment required pursuant to a consent decree.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-720. Financial Capability

A. The Director shall determine that an applicant for a certificate or a water report has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following:
1. The applicant will submit its final plat to a qualified platting authority;
2. The applicant has constructed adequate delivery, storage, and treatment works, and water service is available to each lot; or
3. The applicant has posted a performance bond with the platting authority for the entire cost of adequate delivery, storage, and treatment works.

B. Upon receiving evidence that a platting authority has established standards for proof of financial capability to construct adequate delivery, storage, and treatment works, pursuant to A.R.S. § 9-463.01(C)(8) or A.R.S. § 11-806.01(G), the Director shall classify the platting authority as a qualified platting authority. The Director shall maintain a list of qualified platting authorities.

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. If the applicant is a city or town, the applicant has:
   a. 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
4. 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.

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Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-721. Consistency with Management Plan

A. The Director shall determine whether a designation applicant's projected use of groundwater withdrawn within an active management area is consistent with the management plan as follows:

1. If the applicant is providing water to customers as of the date of application, the applicant's projected water use is consistent with the management plan if either of the following apply:
   a. The applicant is in compliance with its applicable management plan requirements in the most recent calendar year for which data is available before the date of application; or
   b. The applicant has signed a stipulation and consent order that is in effect on the date of the application, or that becomes effective during the time of review of the application, to remedy non-compliance with the management plan requirements and the applicant is in compliance with the terms of the stipulation and consent order.
2. If the applicant has not commenced serving water to customers as of the date of application, the applicant shall submit a water use plan that demonstrates to the Director that compliance with management plan requirements will be achieved through the use of conservation or augmentation measures.
3. If the applicant has a pending request for an administrative review or variance from its management plan requirements, the Director shall not make a finding regarding compliance with this Section until the Director has issued a final decision and order on the request or the request has been withdrawn.

B. The Director shall determine that a certificate applicant's projected use of groundwater withdrawn within an AMA is consistent with the management plan if the applicant submits a water use plan for the subdivision that includes both of the following:

1. Information demonstrating that compliance with management plan requirements will be achieved through conservation or augmentation measures; and
2. All information required to calculate the water requirements for each proposed water use.

C. A certificate applicant for a subdivision of 50 or fewer lots is exempt from the requirements of this rule.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-722. Consistency with Management Goal

A. For the Phoenix, Prescott, or Tucson AMAs, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA in which the proposed use is located for at least 100 years by adding the following:

1. The amount of the groundwater allowance, according to R12-15-724(A), R12-15-726(A), or R12-15-727(A).
2. The amount of any extinguishment credits pledged to the certificate or designation, according to R12-15-724(B), R12-15-726(B), or R12-15-727(B).
3. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.

B. The Director shall determine that a proposed groundwater use in the Phoenix, Prescott, or Tucson AMA is consistent with the management goal of the AMA if the volume calculated in subsection (A) is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.

C. For a certificate in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA for at least 100 years by adding the following:

1. The amount of the groundwater allowance, according to R12-15-725(A)(1).
2. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after January 1, 2019, according to R12-15-725(B), except that annual reported use of such extinguishment credits to make groundwater use consistent with the management goal is limited to the following percentages of groundwater use from the sixth year after certificate issuance:

Years After Certificate Issuance	Percentage of Total Groundwater Use that May Be Made Consistent with the Pinal AMA Management Goal with Extinguishment Credits Pledged to Certificate
Years Six through Ten	75%
Years Eleven through Fifteen	50%

Years Sixteen through Twenty	25%
Years Twen-ty-one and After	0%

3. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019.
4. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished before October 1, 2007. The Director shall calculate the amount of the extinguishment credits by multiplying the annual amount of the credits by 100.
5. Any groundwater that is consistent with achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.

D. For a certificate in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the AMA if the volume calculated in subsection (C) is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.

E. For a designation in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the Pinal AMA on an annual basis for at least 100 years by adding the following for each year during the 100-year period:

1. The amount of the groundwater allowance, according to R12-15-725(A)(2). If any of the groundwater allowance is not used during a year, the unused groundwater allowance shall not be added to the volume calculated under this subsection for the following year.
2. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after January 1, 2019, divided by the number of years remaining in which the credits may be used pursuant to R12-15-725(B). These credits shall be included in the calculation only for those years in which the credits may be used. If any of the extinguishment credits were originally pledged to a certificate and are being used to support the municipal provider's designation pursuant to R12-15-723(G)(2), the extinguishment credits shall not be limited by the percentages in subsection (C)(2) of this section.
3. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019, divided by 100. Extinguishment credits for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019 may be used in any year.
4. The annual amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished before October 1, 2007. The following shall apply if any of the extinguishment credits are not used during a calendar year:
   a. If the extinguishment credits were pledged to the designation before October 1, 2007, any extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.
   b. If the extinguishment credits are pledged to the designation on or after October 1, 2007, any of the extinguishment credits not used during a calendar year shall not be added to the volume calculated under this subsection for the following calendar year, except that if the extinguishment credits were originally pledged to a certificate before October 1, 2007 and are used to support the municipal provider's designation pursuant to R12-15-723(G)(2), any of the extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.
5. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.

F. For a designation in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the Pinal AMA if the volume calculated in subsection (E) for each year during the 100-year period is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater.

G. Upon application, the following volumes of groundwater used by an applicant are considered consistent with the management goal:

1. If the Director determines that a surface water supply is physically available under R12-15-716 and the volume of the supply actually available during a calendar year is equal to or less than the drought volume for the supply, the volume of groundwater, other than the groundwater that is accounted for under subsection (A), (C), or (E), withdrawn within the AMA that, when combined with the available surface water supply, is equal to or less than the drought volume.
2. Any volume of groundwater withdrawn within a portion of an AMA that is exempt from conservation requirements under A.R.S. Title 45 due to waterlogging. The Director shall review the application of this exclusion on a periodic basis, not to exceed 15 years.
3. Remedial groundwater that is consistent with the management goal according to the requirements of R12-15-729.

H. An applicant for a certificate of assured water supply for a dry lot subdivision of 20 lots or fewer is exempt from the requirements of this Section.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4). At the request of the Department R12-15-722(A)(2) through (5) have been removed since they were not part of the amendments made to this Section in Supp. 18-4; subsections R12-15-722(A)(2) through (3) as amended at 13 A.A.R. 1394 have been restored (Supp. 19-2).

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

R12-15-723. Extinguishment Credits

A. Except as provided in subsection (D), the owner of a grandfathered right may extinguish the right in exchange for extinguishment credits by submitting the following:
1. A notarized statement of extinguishment of a grandfathered right on a form provided by the Director;
2. The grandfathered right number;
3. If the right being extinguished is a Type 1 non-irrigation grandfathered right or an irrigation grandfathered right, evidence of ownership of the land to which the grandfathered right is appurtenant;
4. If the grandfathered right is located in the Prescott AMA, evidence that all of the following conditions are met:
   a. The land to which the right is appurtenant has not been and will not be subdivided pursuant to a preliminary plat or a final plat that was approved by a city, town, or county before August 21, 1998; and
   b. The land to which the right is appurtenant is not and will not be the location of a subdivision for which a complete and correct application for a certificate of assured water supply was submitted to the Director before August 21, 1998;
5. If the right being extinguished is an irrigation grandfathered right, evidence that the development of the land to which the right is appurtenant is not completed; and
6. Any additional information the Director may reasonably require to process the extinguishment.

B. The Director shall calculate the amount of extinguishment credits pursuant to R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B). The Director shall notify the owner of the amount of extinguishment credits in writing. If the owner is extinguishing only a portion of the right, the Director shall issue a new certificate of grandfathered right for the remainder of the right.

C. A Type 1 non-irrigation grandfathered right or an irrigation grandfathered right may be extinguished in whole or in part. A Type 2 non-irrigation grandfathered right may be extinguished only in whole.

D. The following rights may not be extinguished in exchange for extinguishment credits:
1. An irrigation grandfathered right that is appurtenant to land that has been physically developed for a non-irrigation use. The Director shall not consider the land to be physically developed until the development is completed.
2. A Type 1 non-irrigation grandfathered right, if the Director determines that the holder is likely to continue to receive groundwater from an undesignated municipal provider for the same use pursuant to the provider's service area right or pursuant to a groundwater withdrawal permit.
3. A Type 2 non-irrigation grandfathered right that was issued based on the withdrawal of groundwater for mineral extraction or processing or for the generation of electrical energy.
4. On or after January 1, 2025, any grandfathered right that is in the Phoenix, Prescott, or Tucson AMAs.
5. A Type 1 non-irrigation grandfathered right that was requested to be included by a city or town in the Tucson AMA in the determination made under A.R.S. § 45-463(F).

E. The owner of extinguishment credits may pledge the credits to a certificate or to a designation before the certificate or designation is issued by submitting with the application for the certificate or designation a notice of intent to pledge extinguishment credits on a form provided by the Director. The extinguishment credits shall be pledged to the certificate or designation upon issuance of the certificate or designation.

F. The owner of extinguishment credits may pledge the credits to a certificate or to a designation after the certificate or designation is issued by submitting a notice of intent to pledge extinguishment credits on a form provided by the Director. The Director shall notify the owner of the extinguishment credits and the certificate holder or designated provider that the credits have been pledged to the certificate or designation.

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, 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. 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. The Director shall review a statement of extinguishment of a grandfathered right and a notice of intent to pledge extinguishment credits pursuant to the licensing time-frame provisions in R12-15-401.

I. A person may apply to the Director on or before December 31, 2015 for the restoration of all or a portion of an irrigation grandfathered right extinguished under this Section during calendar year 2005, 2006 or 2007 if all of the following conditions are met:
1. The person owns the land to which the right or portion of the right was appurtenant;
2. The land to which the right or portion of the right was appurtenant is physically capable of being irrigated and the infrastructure for delivering water to the land for irrigation purposes remains intact and is operable;

3. The person holds extinguishment credits that were issued for the extinguishment of a grandfathered right in the AMA in which the land is located and that have not been pledged to a certificate or designation under subsection (E) or (F) in the following amount, as applicable:
   a. If the person seeks to restore the entire irrigation grandfathered right, an amount of extinguishment credits equal to the amount of extinguishment credits issued by the Director in exchange for extinguishment of the irrigation grandfathered right; or
   b. If the person seeks to restore a portion of the irrigation grandfathered right, an amount of extinguishment credits equal to the result obtained by multiplying the percentage of the right sought to be restored by the amount of extinguishment credits issued by the Director in exchange for the extinguishment of the right.

J. An application to restore all or a portion of an irrigation grandfathered right under subsection (I) shall be on a form provided by the Director and include all of the following:
1. A fee of $250.00;
2. The irrigation grandfathered right number of the right sought to be restored;
3. If a certificate of extinguishment credits was issued by the Director for the extinguishment credits described in subsection (I)(3), the original certificate or an affidavit stating that the certificate is lost;
4. A copy of a deed showing that the applicant owns the land to which the right or portion of the right sought to be restored was appurtenant and, if the application seeks to restore only a portion of the right, the legal description of the land to which that portion of the right was appurtenant;
5. A certification by the applicant that the conditions described in subsection (I) are met; and
6. An agreement in writing that if the right or portion of the right is restored, the flexibility account for the land to which the right or portion of the right is appurtenant shall have an account balance of zero at the beginning of the calendar year in which the right or portion of the right is restored and that any credits registered to the flexibility account after the right is restored may not be conveyed or sold to any person, including the applicant.

K. The Director shall approve an application to restore all or a portion of an irrigation grandfathered right submitted under subsection (I) if the application includes the fee and the information required under subsection (J) and the Director determines that the information is correct. If the Director approves an application to restore all or a portion of an irrigation grandfathered right, all of the following apply:
1. The irrigation water duty for the land to which the right or portion of the right is restored shall be the same as it was when the right was extinguished, unless the irrigation water duty is changed in a management plan adopted after the right was extinguished or is modified pursuant to A.R.S. § 45-575;
2. The flexibility account for the land to which the right or portion of the right is appurtenant shall have an account balance of zero at the beginning of the calendar year in which the right or portion of the right is restored and any credits registered to the flexibility account after the right is restored may not be conveyed or sold to any person, including the applicant.
3. The applicant shall forfeit the extinguishment credits described in subsection (I)(3); and
4. The restored irrigation grandfathered right may be extinguished in exchange for extinguishment credits under this Section. For purposes of calculating the amount of extinguishment credits under R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B), the calendar year of extinguishment is the calendar year in which the restored irrigation grandfathered right is extinguished.

L. The Director shall review an application to restore an irrigation grandfathered right under subsection (I) pursuant to the licensing time-frame provisions in R12-15-401. The application shall have an administrative completeness review time-frame of 30 days, a substantive review time-frame of 90 days, and an overall time-frame of 120 days.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 17 A.A.R. 1989, effective September 13, 2011 (Supp. 11-3). Amended by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).

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.
4. 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. The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Phoenix AMA as follows:

1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
   a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
   b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

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.

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.

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. The Director shall calculate the extinguishment credits for extinguishing a grandfathered right in the Pinal AMA as follows.

1. The Director shall calculate the initial volume of extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:

a. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate of grandfathered right by 100.

b. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by 100, except that:

i. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, only those acres associated with the portion of the right that is extinguished shall be included in the calculation; and

ii. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the amount of the debit shall be subtracted from the amount of the extinguishment credits.

2. For grandfathered rights extinguished in the Pinal active management area on or after January 1, 2019, if the amount of the extinguishment credits remaining unused in the fifth, tenth, fifteenth, and twentieth year after the year of extinguishment is greater than an amount calculated by multiplying the initial volume of extinguishment credits by the applicable percentage shown in the table below, the amount of unused credits shall be reduced to an amount calculated by multiplying the initial volume of extinguishment credits by the applicable percentage:

Year After Extinguishment	**Percentage**
Fifth	75%
Tenth	50%
Fifteenth	25%
Twentieth	0%

3. For purposes of subsection (B)(2), the amount of extinguishment credits remaining unused shall be the initial volume of extinguishment credits issued for the extinguishment of the right, less:

a. The amount of any of the extinguishment credits previously pledged to a certificate of assured water supply or designation of assured water supply pursuant to R12-15-723, subsections (E) or (F) and reported to the Department as having been used; and

b. The amount of any previous reductions made to the extinguishment credits pursuant to subsection (B)(2).

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 1979, effective January 2, 2010 (Supp. 09-4). Amended by final rulemaking at 19 A.A.R. 4174, effective December 3, 2013 (Supp. 13-4). Amended by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).

R12-15-725.01. Repealed

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Historical Note

New Section made by final rulemaking at 19 A.A.R. 4174, effective December 3, 2013; with automatic repeal date of September 15, 2014 (Supp. 13-4). Section amended with automatic repeal, removed by final rulemaking at 20 A.A.R. 2673; effective September 12, 2014 (Supp. 14-3). Repealed by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).

R12-15-725.02. Repealed

Historical Note

New Section made by final rulemaking at 19 A.A.R. 4174, effective September 15, 2014 (Supp. 13-4). Repealed by final rulemaking at 20 A.A.R. 2673, effective September 12, 2014 (Supp. 14-3).

R12-15-726. Prescott AMA Calculation of Groundwater Allowance and Extinguishment Credits

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

1. If the application is for a certificate of assured water supply, the Director shall:
   a. Subtract the year of application from 2025,
   b. Multiply the number determined in subsection (A)(1)(a) by the applicant's annual estimated water demand, and
   c. Divide that product by two. The minimum volume that may be calculated in this subsection is zero acre-feet.
2. If the application is for a designation of assured water supply:
   a. Except as provided in subsections (A)(3) and (A)(5), if the applicant was in existence as of January 12, 1999, and the application is filed before calendar year 2026, the Director shall:
      i. Multiply by 100 the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott AMA for use within the applicant's service area in any calendar year from 1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area;
      ii. Determine the volume of the applicant's total water demand, from any source, for 1999, consistent with the municipal conservation requirements established for the applicant in the management plan in effect on the date of application;
      iii. Determine the volume of the applicant's total water demand, from any source, for 2014, consistent with the municipal conservation requirements established for the applicant in the management plan in effect on the date of application;
      iv. Subtract the volume calculated in subsection (A)(2)(a)(ii) from the volume calculated in subsection (A)(2)(a)(iii) and then multiply the difference by 26;
      v. Divide the product obtained in subsection (A)(2)(a)(iv) by two;
      vi. If any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, multiply one-half acre-foot of groundwater by the number of housing units receiving the service and then multiply that product by 100;
      vii. Determine the volume of groundwater withdrawn by the applicant from within the Prescott active management area during the period beginning January 1, 1999, and ending December 31 of the calendar year before the date of the application;
      viii. Multiply the volume of groundwater withdrawn by the applicant from within the Prescott active management area in 1999 by the number of calendar years in the period beginning with 1999 and ending with the calendar year before the date of application;
      ix. Subtract from the volume calculated in subsection (A)(2)(a)(vii) the volume calculated in subsection (A)(2)(a)(viii). The volume calculated in this subsection shall not be less than zero; and
      x. Add the volumes calculated in subsections (A)(2)(a)(i), (A)(2)(a)(v), and (A)(2)(a)(vi), and then subtract from the sum the volume calculated in subsection (A)(2)(a)(ix).
   b. If the applicant did not exist as of January 12, 1999, or the date of application occurs after calendar year 2025, the groundwater allowance is zero acre-feet, except that if any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, the groundwater allowance is a volume of groundwater computed by multiplying one-half acre-foot of groundwater by the number of housing units receiving the service and multiplying that product by 100.
3. For the purpose of determining the groundwater allowance under subsection (A)(2)(a), at the request of the applicant, the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(ii) through (v) with the amount of groundwater necessary for the applicant to serve the residential lots described in subsection (A)(4):
   a. To compute this amount of groundwater, the Director shall:
      i. Determine the average dwelling occupancy within the applicant's service area and multiply that average occupancy by an amount of groundwater, calculated by multiplying 150 gallons per capita per day by 365 days; and

45-105. Powers and duties of director

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.

2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.

3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and use of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, use of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.

4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.

5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.

6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.

7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3 and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; 33 United States Code section 701-1).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title. If water becomes available under any contract

executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.

2. Administer all laws relating to groundwater, as provided in this title.

3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.

4. Coordinate and confer with and may contract with:

(a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.

(b) The department of environmental quality with respect to title 49, chapter 2 for its assistance in the development of state water plans.

(c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.

(d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.

5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.

6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.

7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.

8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.

9. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.

10. Provide staff support to the Arizona water protection fund commission established by chapter 12 of this title.

11. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.

12. Provide staff support to the Arizona water banking authority established by chapter 14 of this title.

13. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:

(a) The current status of the water supply in this state and any likely changes in that status.

(b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.

(c) The status of current water conservation programs in this state.

(d) The current state of each active management area and the level of progress toward management goals in each active management area.

(e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.

(f) The status of any pending or likely litigation regarding surface water adjudications or other water-related litigation and the potential impacts on this state's water supplies.

(g) The status of Indian water rights settlements and related negotiations that affect this state.

(h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

14. Not later than December 1, 2023 and on or before December 1 of each year thereafter, prepare and issue a water supply and demand assessment for at least six of the fifty-one groundwater basins established pursuant to section 45-403. The director shall ensure that a water supply and demand assessment is completed for all groundwater basins and initial active management areas at least once every five years. The director may contract with outside entities to perform some or all of the assessments and those outside entities shall be identified in the assessment.

45-576. Certificate of assured water supply; designated cities, towns and private water companies; exemptions; definition

A. Except as provided in subsections G and J of this section, a person who proposes to offer subdivided lands, as defined in section 32-2101, for sale or lease in an active management area shall apply for and obtain a certificate of assured water supply from the director before presenting the plat for approval to the city, town or county in which the land is located, where such is required, and before filing with the state real estate commissioner a notice of intention to offer such lands for sale or lease, pursuant to section 32-2181, unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

B. Except as provided in subsections G and J of this section, a city, town or county may approve a subdivision plat only if the subdivider has obtained a certificate of assured water supply from the director or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section. The city, town or county shall note on the face of the approved plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

C. Except as provided in subsections G and J of this section, the state real estate commissioner may issue a public report authorizing the sale or lease of subdivided lands only on compliance with either of the following:

1. The subdivider, owner or agent has paid any activation fee required under section 48-3772, subsection A, paragraph 7 and any replenishment reserve fee required under section 48-3774.01, subsection A, paragraph 2 and has obtained a certificate of assured water supply from the director.

2. The subdivider has obtained a written commitment of water service for the lands from a city, town or private water company designated as having an assured water supply pursuant to this section and the subdivider, owner or agent has paid any activation fee required under section 48-3772, subsection A, paragraph 7.

D. The director shall designate private water companies in active management areas that have an assured water supply. If a city or town acquires a private water company that has contracted for central Arizona project water, the city or town shall assume the private water company's contract for central Arizona project water.

E. The director shall designate cities and towns in active management areas where an assured water supply exists. If a city or town has entered into a contract for central Arizona project water, the city or town is deemed to continue to have an assured water supply until December 31, 1997. Commencing on January 1, 1998, the determination that the city or town has an assured water supply is subject to review by the director and the director may determine that a city or town does not have an assured water supply.

F. The director shall notify the mayors of all cities and towns in active management areas and the chairmen of the boards of supervisors of counties in which active management areas are located of the cities, towns and private water companies designated as having an assured water supply and any modification of that designation within thirty days of the designation or modification. If the service area of the city, town or private water company has qualified as a member service area pursuant to title 48, chapter 22, article 4, the director shall also notify the conservation district of the designation or modification and shall report the projected average annual replenishment obligation for the member service area based on the projected and committed average annual demand for water within the service area during the effective term of the designation or modification subject to any limitation in an agreement between the conservation district and the city, town or private water company. For each city, town or private water company that qualified as a member service area under title 48, chapter 22 and was designated as having an assured water supply before January 1, 2004, the director shall report to the conservation district on or before January 1, 2005 the projected average annual replenishment obligation based on the projected and committed average annual demand for water within the service area during the effective term of the designation subject to any limitation in an agreement between the conservation district and the city,

town or private water company. Persons proposing to offer subdivided lands served by those designated cities, towns and private water companies for sale or lease are exempt from applying for and obtaining a certificate of assured water supply.

G. This section does not apply in the case of the sale of lands for developments that are subject to a mineral extraction and processing permit or an industrial use permit pursuant to sections 45-514 and 45-515.

H. The director shall adopt rules to carry out the purposes of this section. On or before January 1, 2008, the rules shall provide for a reduction in water demand for an application for a designation of assured water supply or a certificate of assured water supply if a gray water reuse system will be installed that meets the requirements of the rules adopted by the department of environmental quality for gray water systems and if the application is for a certificate of assured water supply, the land for which the certificate is sought must qualify as a member land in a conservation district pursuant to title 48, chapter 22, article 4. For the purposes of this subsection, "gray water" has the same meaning prescribed in section 49-201.

I. If the director designates a municipal provider as having an assured water supply under this section and the designation lapses or otherwise terminates while the municipal provider's service area is a member service area of a conservation district, the municipal provider or its successor shall continue to comply with the consistency with management goal requirements in the rules adopted by the director under subsection H of this section as if the designation was still in effect with respect to the municipal provider's designation uses. When determining compliance by the municipal provider or its successor with the consistency with management goal requirements in the rules, the director shall consider only water delivered by the municipal provider or its successor to the municipal provider's designation uses. A person is the successor of a municipal provider if the person commences water service to uses that were previously designation uses of the municipal provider. Any groundwater delivered by the municipal provider or its successor to the municipal provider's designation uses in excess of the amount allowed under the consistency with management goal requirements in the rules shall be considered excess groundwater for purposes of title 48, chapter 22. For the purposes of this subsection, "designation uses" means all water uses served by a municipal provider on the date the municipal provider's designation of assured water supply lapses or otherwise terminates and all recorded lots within the municipal provider's service area that were not being served by the municipal provider on that date but that received final plat approval from a city, town or county on or before that date. Designation uses do not include industrial uses served by an irrigation district under section 45-497.

J. Subsections A, B and C of this section do not apply to a person who proposes to offer subdivided land for sale or lease in an active management area if all the following apply:

1. The director issued a certificate of assured water supply for the land to a previous owner of the land and the certificate was classified as a type A certificate under rules adopted by the director pursuant to subsection H of this section.

2. The director has not revoked the certificate of assured water supply described in paragraph 1 of this subsection, and proceedings to revoke the certificate are not pending before the department or a court. The department shall post on its website a list of all certificates of assured water supply that have been revoked or for which proceedings are pending before the department or a court.

3. The plat submitted to the department in the application for the certificate of assured water supply described in paragraph 1 of this subsection has not changed.

4. Water service is currently available to each lot within the subdivided land and the water provider listed on the certificate of assured water supply described in paragraph 1 of this subsection has not changed.

5. The subdivided land qualifies as a member land under title 48, chapter 22 and the subdivider has paid any activation fee required under section 48-3772, subsection A, paragraph 7 and any replenishment reserve fee required under section 48-3774.01, subsection A, paragraph 2.

6. The plat is submitted for approval to a city, town or county that is listed on the department's website as a qualified platting authority.

K. Subsection J of this section does not affect the assignment of a certificate of assured water supply as prescribed by section 45-579.

L. On or before December 31, 2023, the director shall study and submit to the governor, president of the senate and speaker of the house of representatives a report on whether and how a person that seeks a building permit for six or more residences within an active management area, without regard to any proposed lease term for those residences, should apply for and obtain a certificate of assured water supply from the director before presenting the permit application for approval to the county in which the land is located, unless the applicant has obtained a written commitment of water service for the residences from a city, town or private water company designated as having an assured water supply pursuant to this section.

M. For the purposes of this section, "assured water supply" means all of the following:

1. Sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, with respect to an applicant that is a member of the district, "sufficient groundwater" for the purposes of this paragraph means that the proposed groundwater withdrawals that the applicant will cause over a period of one hundred years will be of adequate quality and will not exceed, in combination with other withdrawals from land in the replenishment district, a depth to water of one thousand feet or the depth of the bottom of the aquifer, whichever is less. In determining depth to water for the purposes of this paragraph, the director shall consider the combination of:

(a) The existing rate of decline.

(b) The proposed withdrawals.

(c) The expected water requirements of all recorded lots that are not yet served water and that are located in the service area of a municipal provider.

2. The projected groundwater use is consistent with the management plan and achievement of the management goal for the active management area.

3. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use, including a delivery system and any storage facilities or treatment works. The director may accept evidence of the construction assurances required by section 9-463.01, 11-823 or 32-2181 to satisfy this requirement.

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair, Council Members, and Members of the Governor's Regulatory Review Council,

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

DAVID Hovey Jr.

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007
Jessica Klein, Chair
Frank Thorwald, Council Member
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Sncerely,

Eric Rinestone
Wilson Property Services, Inc.
8120 East Cactus Road
Suite #300
Scottsdale, Arizona 85260

Work (480) 874-3234
Mobile (602) 390-1451
Fax (480) 874-2601
E-mail erinestone@wilsonps.net

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

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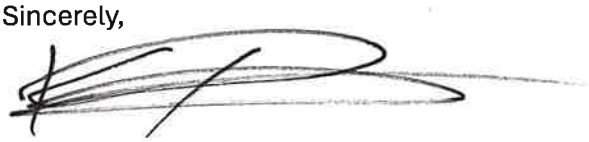

Kenneth Reycraft
Insight Land & Investments

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

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Sincerely,

Haydn Reycraft

Insight Land & Investments

October 21, 2024

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Sincerely,

Kyle Root

Insight Land & Investments

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October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: RMG HEARTLAND 53, LLLP Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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Sincerely,

RMG HEARTLAND 53, LLLP, an
Arizona limited liability limited partnership
By: RMG Real Estate Services XXII, L.L.C.,
its General Partner

Signed by:
Augustine H. Gomez
1C32DCD4E7234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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October 21, 2024

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Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
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Dear Chair and Council Members:

RE: RMG HEARTLAND 81, L.L.C. Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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Sincerely,

RMG HEARTLAND 81, L.L.C.,
an Arizona limited liability company
By: RMG RES-1C, L.L.C., an Arizona
limited liability company, its Administrator

Signed by:
Augustine H. Gomez
1C32DCD4F7234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: RMG HEARTLAND 125, LLLP Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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Sincerely,

RMG HEARTLAND 125, LLLP, an
Arizona limited liability limited partnership
By: RMG REAL ESTATE SERVICES XXII, L.L.C.,
an Arizona limited liability company,
Its: General Partner

Signed by:
By: Augustine H. Gomez
1C32DCD4F7234D8...
Name: Augustine H. Gomez
Its: Authorized Officer

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Jeff Wilmer, Council Member
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John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

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By: RMG Real Estate Services XXII, L.L.C.,
its General Partner

Signed by:
Augustine H. Gomez
1C32DCD4F7234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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By: RMG RES-1C, L.L.C., an Arizona
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By: _____
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Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: RMG HC SKOUSEN & COOLIDGE, L.L.C. Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

RMG HC SKOUSEN & COOLIDGE, L.L.C.,
an Arizona limited liability company
By: RMG RES-1C, L.L.C., an Arizona
limited liability company, its Administrator

Signed by:
Augustine H. Gomez
1C32DCD4F7234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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VAULTER
REAL ESTATE | INVESTMENTS

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: RMG ARIZONA PROPERTIES HOLDING XVII, L.L.C. Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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Sincerely,

RMG ARIZONA PROPERTIES HOLDING XVII, L.L.C., an Arizona limited liability company
By: McRae Management Services, L.L.C., an Arizona limited liability company, its Manager

Signed by:
Augustine H. Gomez
1C32DCD4F7234D8...
By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: HR CAROLINE 3, L.L.C. Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

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Sincerely,

HR CAROLINE 3, L.L.C., an
Arizona limited liability company
By: Gainey Manager, L.L.C., an
Arizona limited liability company,
Its: Manager

Signed by:
Augustine H. Gomez
1C32DCD4F7234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: RMG LUCKY HUNT 65, L.L.C. Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

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Sincerely,

RMG LUCKY HUNT 65, L.L.C., an
Arizona limited liability company
By: RMG REAL ESTATE SERVICES XXIII, L.L.C., an
Arizona limited liability company, its Administrator

Signed by:
By: Augustine H. Gomez
1C32DCD4E7234D8...
Name: Augustine H. Gomez
Its: Authorized Officer

Docusign Envelope ID: EACD001A-C462-4D07-B6D2-1CC3074F630B

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Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: RMG MARABELLA, LLLP Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

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Sincerely,

RMG MARABELLA, LLLP, an
Arizona limited liability limited partnership
By: RMG REAL ESTATE SERVICES XXII, L.L.C.,
an Arizona limited liability company, its General Partner

Signed by:
Augustine H. Gomez
1C32DCD4F7234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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Dear Chair and Council Members:

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Sincerely,

RMG MARABELLA, LLLP, an
Arizona limited liability limited partnership
By: RMG REAL ESTATE SERVICES XXII, L.L.C.,
an Arizona limited liability company, its General Partner

Signed by:
Augustine H. Gomez
1C32DCD4F7234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: RMG RESIDENTIAL 2010, LP Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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Sincerely,

RMG RESIDENTIAL 2010, LP, an
Arizona limited partnership
By: RMG Real Estate Services XVI, L.L.C., an Arizona limited liability company, its General Partner

Signed by:
By: Augustine H. Gomez
1C32DCD4F7234D8...
Name: Augustine H. Gomez
Its: Authorized Officer

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Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: RMG MVR 158, L.L.C. Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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Sincerely,

RMG MVR 158, L.L.C.,
an Arizona limited liability company
By: RMG RES-1C, L.L.C.,
an Arizona limited liability company,
its administrator

Signed by:
Augustine H. Gomez
1C32DCD4F7234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: RMG Picacho 601, L.L.C. Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

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Sincerely,

RMG Picacho 601, L.L.C.,
an Arizona limited liability company
By: RMG RES-1C, L.L.C.,
an Arizona limited liability company,
its Administrator

Signed by:
Augustine H. Gomez
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By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: PALMS-MAGIC RANCH 80, L.L.C. Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

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Sincerely,

PALMS-MAGIC RANCH 80, L.L.C., an
Arizona limited liability company
By: RMG Real Estate Services II, L.L.C., an
Arizona limited liability company, its Administrator

Signed by:
Augustine H. Gomez
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By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: RMG RODEO RANCH, L.L.C. Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Docusign Envelope ID: EACD001A-C462-4D07-B6D2-1CC3074F630B

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

RMG RODEO RANCH, L.L.C.,
an Arizona limited liability company
By: RMG Real Estate Services XXII, L.L.C.,
an Arizona limited liability company,
its Administrator

Signed by:
Augustine H. Gomez
1C32DCD4E7234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

Docusign Envelope ID: EACD001A-C462-4D07-B6D2-1CC3074F630B

VAULTER
REAL ESTATE | INVESTMENTS

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: WALKER BUTTE 500, L.L.C. Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

WALKER BUTTE 500, L.L.C.,
an Arizona limited liability company
By: RMG Real Estate Services XV, L.L.C.,
an Arizona limited liability company,
its Administrator

Signed by:
Augustine H. Gomez
1C32DCD4E7234D8...
By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

Docusign Envelope ID: EACD001A-C462-4D07-B6D2-1CC3074F630B

VAULTER
REAL ESTATE | INVESTMENTS

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: WALKER BUTTE 700, L.L.C. Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Docusign Envelope ID: EACD001A-C462-4D07-B6D2-1CC3074F630B

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

WALKER BUTTE 700, L.L.C.,
an Arizona limited liability company
By: RMG Real Estate Services XV, L.L.C.,
an Arizona limited liability company,
its Administrator

Signed by:
Augustine H. Gomez
1C32DCD4F7234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

CASA 140, LLC
3131 East Camelback Road, Suite 310
Phoenix, Arizona 85016
(602) 279-3999 • Fax (602) 230-8065

October 17, 2024

grrccomments@azdoa.gov

Jessica Klein, Chair
Jay Spector, Council Member
Jenna Bentley, Council Member (at-large)
Rana Lashgari, Council Member (at-large)
Frank Thorwald, Council Member
Jeff Wilmer, Council Member
John Sundt, Council Member

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules (File Number R24-156) submitted to the Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council:

We continue to extend our sincere thanks to the Governor's Council for its review and working with the interested parties to develop the Alternative Designation of Assured Water Supply ("ADAWS"). ADAWS will assist to create a sustainable water supply in the Pinal AMA benefiting all parts our economy within Pinal County.

We support the ADAWS and Commingling rules package submitted by ADWR on October 7, 2024.

Again, thank you to the Governor's Office for all its efforts in achieving this long-term resolution for sustainable water management and economic growth. We look forward to your support in approving these essential new rules.

Sincerely,

Tom Tait,
Landowner

k

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Council Members,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS rules package submitted by ADWR on October 7th, 2024 and provide a "real world" example of a community that will be helped by the implementation of these proposed rules.

I'm writing this letter in my capacity as the President of Communities Southwest, an Arizona based Master Planned Community Developer with over 40 years of experience, during which time, we have acquired, entitled, developed, and/or sold more than 40,000 single-family residential homesites in over 45 land and community development projects, 5 retail development projects, and 2 golf courses.

An essential component of our work to prepare a piece of land for community development is to work with ADWR to comply with the important rules established through the Assured Water Supply Program ("AWS") to ensure that our future community residents have a clean, reliable and long-lasting water source. A prime example of this type of work is demonstrated through our 1,800-acre Villago Master Planned Community in the City of Casa Grande; one of our most beautiful and successful communities. This community began its life in 2006, with the development of 999 single family residential lots and a vibrant grocery anchored retail shopping center, along with tens of millions of dollars in backbone utility, street, park and common area infrastructure, meant not only to serve that initial phase of the project but also future phases. At that time, a groundwater source

for the community was studied and established through the AWS, in consultation with ADWR, and the project was granted an "Analysis of Assured Water Supply" by ADWR. This "Analysis" is still active and in place today. After a long delay in project development caused by the Great Financial Crisis, we attempted to restart development of the project but were halted by ADWR's creation and release of a revised groundwater model that indicated that there were "unmet" municipal and AWS groundwater demands with the broader Pinal AMA. This new model effectively halted the development of new subdivisions within the Pinal AMA area, except within concentrated areas where existing Designated Water Providers already existed.

Unfortunately, Villago, like the vast majority of other property within the Pinal AMA, fell within an area without a designated provider service area. Existing ADWR rules make it all but impossible for existing, non-designated water providers, like Arizona Water Company in our case, to become designated. Realizing that the designation process creates the best and most reliable scenario for ensuring that communities have the promised 100-year water supply and that the existing rules were preventing service providers like Arizona Water Company from becoming designated, ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. I fully support these new rules and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County and will allow us to restart the development of Villago. Providing much needed housing within a beautiful, active and existing Master Planned Community in close proximity to the significant job and business growth that is occurring in Casa Grande.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

COMMUNITIES SOUTHWEST Inc.

Michael Kern
President

7001 N. Scottsdale Road | Suite 1015 | Scottsdale, AZ 85253 | p 480.315.2600 | f 480.315.2699

CITY OF CASA GRANDE | STRONGER UNITED
510 E. Florence Blvd., Casa Grande, Arizona 85122
(520) 421-8600 | www.CasaGrandeAZ.gov

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 21st, 2024

Dear Members of the Governor's Regulatory Review Council,

As the Mayor of the City of Casa Grande, I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

CITY OF CASA GRANDE | STRONGER UNITED
510 E. Florence Blvd., Casa Grande, Arizona 85122
(520) 421-8600 | www.CasaGrandeAZ.gov

As for the City of Casa Grande, the assured water supply rules are paramount in creating and maintaining a sustainable economy. The new rules directly address the projected shortfall in groundwater. If adopted, we will once again be able to approve new workforce housing, hopefully in time to prevent the further escalation of housing costs. Additionally, the importance of effluent in providing water security to all residents of Casa Grande, we prepared to use our effluent to recharge the aquifer beneath our City to replace groundwater used by existing residences and businesses and provide an additional renewable water resource within the aquifer for future growth.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed affordable housing, as I noted above. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Craig H. McFarland
Mayor City of Casa Grande
510 E. Florence Blvd
Casa Grande, AZ 85122
Craig_mcfarland@casagrandeaz.gov
(M) 520-251-0687

CITY OF CASA GRANDE | STRONGER UNITED
510 E. Florence Blvd., Casa Grande, Arizona 85122
(520) 421-8600 | www.CasaGrandeAZ.gov

October 18, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7, 2024.

Dear Chair and Council Members,

The City of Casa Grande appreciates the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

As the City Manager of the City of Casa Grande, I am writing to express my support for the ADWAS and Commingling rules package submitted by ADWR on October 7, 2024.

The Arizona Department of Water Resources (ADWR) team have worked tirelessly with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. The City of Casa Grande, along with other municipal and private water providers, have been working collectively to find realistic solutions that manage water sustainability and growth within the Pinal AMA for close

to a decade. Through this letter I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

I believe you will find that governmental entities, private developers, and residents within Pinal County agree that this proposed solution is a feasible resolve to our current and future management and oversight of this precious resource. It also provides a path for growth and development for our community, Pinal County, and the State of Arizona. The ADAWS allows water providers who are currently not designated as having an Assured Water Supply a path to secure the appropriate water supplies to ensure sustainability of the aquifer concurrently with managing the economic development and growth of a community. Existing residents and businesses will benefit from this because the ADAWS requires water providers to offset existing groundwater pumping with a new non-groundwater supply as new developments come online.

We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. These new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conductive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Larry D. Rains
City Manager

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

AREÁD has been involved in real estate acquisition and development in Arizona for over 30 years.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The

proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land

without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Bijan Afkhami

Bijan Afkhami
VP of Operations & Legal Affairs

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to Arizona Department of Water Resources Assured Water Supply Rule Changes Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the latest changes to the assured water supply rules known as the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state and in particular, Pinal County.

We believe the ADAWS will help to allow economic growth to occur while simultaneously making water supply portfolios more sustainable. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the rule changes and encourage their adoption as soon as possible.

For many years now ADWR has not approved a new final determination of an assured water supply in the Pinal Active Management Area based on groundwater due to concerns of groundwater availability. The ADAWS will allow ADWR to issue new Designations of Assured Water Supply and subdivisions can move forward. The process also requires the use of new non-local groundwater which will increase sustainability in Pinal County.

Global Water Resources, Inc. - Corporate Headquarters
21410 North 19th Avenue, Suite 220
Phoenix, AZ 85027

Phone: 480-360-7775
Fax: 844-232-3517
www.gwresources.com

I am grateful for all the hard work that went into this by ADWR's staff and the Governor's Office. This is a meaningful step forward for Pinal County. Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Thank you,

Jake Lenderking
Senior Vice President, Water Resources and Legislative Affairs

4900 NORTH SCOTTSDALE ROAD
SUITE 3000
SCOTTSDALE, AZ 85251
TEL (855) 970-0003
www.launch-dfa.com

October 20, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Pamela Giss
Principal

LAUNCH
DEVELOPMENT FINANCE ADVISORS

4900 N. Scottsdale Road
Suite 3000
Scottsdale, AZ 85251

O: (855) 970-0003 ext.4354
D: (480) 874-4358
C: (310) 321-8348
pamelag@launch-dfa.com
www.launch-dfa.com **www.landtolots.com** **thelaunchbond.com** **www.launchlrs.com**
LinkedIn profile
Helping our clients achieve more since 1994.

Silvia Rico
Director of Entitlements
Direct: 480.801.2419
SilviaRico@Forestar.com

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:
RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Silvia Rico

September 20, 2024

RE: Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking Submitted to Secretary of State's Office on August 7, 2024 and Published in the Arizona Administrative Record

Dear Ms. Scantlebury:

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to develop these new Assured Water Supply rules, specifically the ADAWS, which we believe will create a sustainable water supply in the Pinal AMA. A sustainable water supply is very important to all aspects of our economy in Pinal County. Through this letter, I am expressing my direct support for the new rules and encourage their adoption as soon as possible.

As a landowner without a Certificate of Assured Water Supply, these rules are important to me because I have taken the necessary step towards developing my property but did not get the application in in time for the CAWS. I own just short of 200 acres between Coolidge and Casa Grande in the vicinity of Central Arizona College. I have an Arizona Water Company main line running on two sides of the property.

As a part of the agricultural economy, these rules are important to me because we have practiced water efficiency in farming operations for many years under the guidelines of the Grandfathered Water Rights efforts. Literally stewards of the land in knowing that development may be a possibility someday.

Once again, I appreciate the efforts of the Governor's Office and ADWR staff. This is an important step forward for all of Pinal County,

Sincerely,

W. Brian Hanger

Managing Partner, D&G Investments

ARCUS™

ARCUS™ | PRIVATE CAPITAL SOLUTIONS, LLC
4915 E BASELINE RD STE 105 GILBERT, AZ 85234
PHONE: 480.305.7070 FAX: 480.305.7090
WWW.ARCUSCAPITAL.COM

October 18, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

Thank you for all the efforts of the Governor's Office and the staff at the Arizona Department of Water Resources (ADWR) for working with stakeholders to find water solutions in the Pinal AMA.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

We have been intricately involved as a stakeholder in the effort to find reasonable water solutions in the Pinal County region since the initial efforts of ADWR to reassess water in Pinal AMA nearly a decade ago. We very much appreciate the current effort to develop these new Assured Water Supply rules in the form of ADAWS. We believe that will introduce a crucial path forward to create a sustainable water supply in the Pinal AMA. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

A sustainable water supply is very important to all aspects of our economy and quality of life in Pinal County. It is vital to find a balanced solution that protects our most precious natural resource, water, while also supporting reasonable affordability and thoughtful economic and housing development growth.

The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County.

We are multi-generational Arizonans going back to 1878 with a deep heritage in farming, ranching, land development, home building, job creation, technology development, and overall economic development. We even have family who labored a century ago on the dam and reservoir infrastructure that is so foundational to our water and economy today. Smart and innovate water strategy and policy is something that runs deep and multi-generationally for us. The ADAWS program is one of many initiatives our generation is taking on to secure innovative and sustainable life in Arizona for the future.

Again, thank you for the efforts of the Governor's Office and ADWR staff and the great work to find a way forward.

Sincerely,

Jason Barney
480-818-2000
jason@jasonbarney.com
www.jasonbarney.com

October 21, 2024

VIA EMAIL grrc@azdoa.gov
& U.S. POSTAL SERVICE

Governor's Regulatory Review Council
Arizona Department of Administration
100 North Fifteenth Avenue, Suite 302
Phoenix, AZ 85007

RE: Alternative Pathway to Designation of 100-Year Assured Water Supply (ADAWS)

Dear Members of the Governor's Regulatory Review Council:

Chandler appreciates the opportunity to comment on the proposed rulemaking to provide an alternative pathway for a Designation of Assured Water Supply (DAWS). Chandler is the fourth largest city in Arizona and has a long history of commitment to meeting the requirements for a 100-Yr Designation of Assured Water Supply. Chandler has invested billions of dollars in our water and wastewater treatment and distribution systems. These investments demonstrate our commitment to growing our community on renewable surface water supplies, rather than relying on the inexpensive groundwater supplies that are limited and once depleted will be gone forever.

When the 1980 Groundwater Management Act and the Assured Water Supply Program were developed, Chandler was one of the first communities to adopt the principles of sustainable water management and began to transition away from groundwater reliance. After acquiring significant renewable water resources, constructing two surface water treatment plants, three wastewater reclamation facilities, and six aquifer recharge facilities, Chandler is proud to prioritize sustainable aquifer management. It is imperative that the new proposed ADAWS rules continue to protect the investments that have already been made by the dozens of municipal water providers who have invested in sustainable water management and prioritizing healthy aquifers.

All municipal water providers in the Phoenix and Pinal AMAs will be impacted by the outcome of the proposed changes to the Assured Water Supply Program because we all depend on the long-term health of our aquifers. As we face an era of uncertainty on the Colorado River, protecting our aquifers has never been more important to Arizona's future

Mailing Address
Mail Stop 905
PO Box 4008
Chandler, AZ 85244-4008
85286

Public Works & Utilities Department
Environmental Resources/Water Conservation
Telephone (480) 782-3580
Fax (480) 782-3805

Location
975 East Armstrong Way
Building L
Chandler, AZ

www.chandleraz.gov

water security. The Arizona Department of Water Resources has already warned our communities that we can not continue unsustainable growth on groundwater and that they will no longer issue new assured water supply certificates that rely on groundwater. All new growth must secure a reliable and renewable water supply. The Assured Water Supply Program is a critically important regulatory tool to protect our aquifers and protect the water supplies that have already been set aside for our existing communities.

The ADAWS rules as currently proposed represent a delicate balance of hard fought compromises that were negotiated in good faith by all stakeholders. Efforts by some parties to make last minute changes to specific components of these rules could risk unraveling the good work done by all interested parties. The proposed ADAWS rules provide water providers with a very generous groundwater allowance and allow water providers the flexibility to pump groundwater while they develop the required infrastructure to transition to renewable water supplies. The 25% reduction in pumping is the foundation of striking a balance between the immediate needs of water providers who currently rely on groundwater and the long-term need to reduce groundwater mining over time. The "25% rule" ensures that as they acquire new non-groundwater supplies, 25% of those supplies will be used to reduce groundwater pumping in the future. This 25% rule is the primary mechanism to ensure this program continues to meet the objectives of the Assured Water Supply Program and the ADAWS will not be successful without this requirement. The original recommendation of the Governors' Water Policy Council required that 30% of all new non-groundwater supplies should be used to offset existing groundwater pumping. This volume has already been reduced to 25% and reducing it any further puts the entire program in jeopardy.

The City of Chandler respectfully requests that the GRRC approve the ADAWS rules as currently proposed by the Arizona Department of Water Resources.

Sincerely,

Simone Kjolsrud

Simone Kjolsrud
Water Resources Manager, City of Chandler

cc: John Knudson, Public Works & Utilities
Ryan Peters, Strategic Initiatives Director

Mailing Address
Mail Stop 905
PO Box 4008
Chandler, AZ 85244-4008
85286

Public Works & Utilities Department
Environmental Resources/Water Conservation
Telephone (480) 782-3580
Fax (480) 782-3805

Location
975 East Armstrong Way
Building L
Chandler, AZ

www.chandleraz.gov

City of Phoenix
OFFICE OF THE CITY MANAGER

October 21, 2024

VIA EMAIL TO GRRCCOMMENTS@AZDOA.GOV
Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, Arizona 85007

RE: Proposed Rules for Alternative Designation of Assured Water Supply (ADAWS)

To whom it may concern:

The City of Phoenix ("Phoenix') appreciates the opportunity to comment on the proposed referenced rulemaking from the Arizona Department of Water Resources (ADWR). Phoenix supports the adoption of the ADAWS rule in its current form. This rule provides a reasonable way to reduce reliance on unsustainable groundwater withdrawal while supporting sustainable growth.

Phoenix recognizes that the Assured Water Supply Program ("AWS Program") has played a critical role in the economic vitality currently enjoyed in the Phoenix metro area. When the AWS Program was adopted in the 1990s as a result of the passage of the 1980 Groundwater Management Act, Phoenix was one of the first major Valley cities to receive a 100-year Designation of Assured Water Supply from the State of Arizona. This guarantees the future for the residents of Phoenix and supports the investors in business and industry who rely upon the certainty of that designation. However, the program requires accountability and sustainability. While declining groundwater availability threatens additional residential development in undesignated areas of the Phoenix metro area, it is important that Arizona carefully consider the implications of retreating from these important consumer protection and economic vitality principles. There is no affordable housing or economic future without the sustainable water use restrictions of the Groundwater Management Act and the AWS Program.

The ADAWS rule is the next natural progression of the AWS Program. It acknowledges the need for additional housing while recognizing there is no sustainable development that continues to rely solely on groundwater pumping. It allows communities to move forward in their efforts to achieve a Designation using temporary groundwater pumping, but only with the requirement that the pumping must be reduced as the community acquires renewable water supplies. **This is why 25% of all new renewable water supplies must be dedicated to replacing current unsustainable groundwater pumping, putting the community on a path of certainty for its residents and businesses.** Further reducing that commitment to reducing unsustainable groundwater pumping below 25% of new renewable water supplies threatens not only the sustainability of the community participating in the ADAWS program, but also the

existing designated cities in Maricopa County who also rely upon the same aquifers and must restrict their groundwater pumping to conform with the AWS Program. More importantly, it erodes the protections for homeowners, business owners and economic investors in Arizona that the State values and protects its valuable but limited water resources.

Phoenix supports the balance of consumer protection and continued sustainable growth that is represented by the current ADAWS rule proposal, especially the requirement that 25% of new renewable water supplies be used to replace unsustainable groundwater pumping.

Sincerely,

Cynthia S. Campbell

Cynthia S. Campbell
Water Resources Management Advisor

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Bryan M Hartman

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

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Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply

determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Justin Carlson

Gabrych Family Asset Manager

COOLEY FARMS

6859 E. Rembrandt Ave., Suite 125 Mesa, AZ 85212

October 18, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
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RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I want to express my gratitude for the Council's ongoing dedication to balancing the needs of Arizona's residents and stakeholders while maintaining effective regulations. Your role in reviewing agency regulations, especially the Alternative Designation of Assured Water Supply (ADAWS) rules proposed by the Arizona Department of Water Resources (ADWR), is crucial for promoting sustainable water management and economic development in our state.

I am writing to express my support for the ADAWS and Commingling rules package that ADWR submitted on October 7, 2024.

ADWR has diligently collaborated with stakeholders to create the ADAWS option, which aims to strike a balance between the two current methods for securing an assured water supply determination. These new rules introduce a third method for establishing an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from various business sectors in Pinal County are also submitting letters in favor of the ADAWS. I fully endorse these new rules and the statements from my colleagues, and I urge you to adopt the ADAWS as it represents a significant advancement for Pinal County.

Given the current conditions on the Colorado River and the record heat, Arizona's Assured Water Supply program is more essential than ever in demonstrating that our state is a safe place to invest. The proposed rules package is a crucial step toward addressing recent groundwater modeling challenges that have halted new assured water supply determinations. These new rules offer an additional avenue for water providers to obtain a new assured water supply determination and provide land without existing determinations the chance to develop

needed and affordable housing in Pinal County. We can no longer depend solely on a groundwater-only based solution. With each passing day, housing becomes less affordable as we delay investing in sustainable water supplies. The new rules present a sensible way forward for building our communities.

Thank you for your attention to this important issue. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and responsive to our communities' needs. I look forward to your support in approving these vital new rules.

Sincerely,

Todd Cooley

Cooley Farms, LLC

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SUN STATE BUILDERS

October 15, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)
Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

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I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Established September 1973
General Contractor • Construction Management • Development
1050 West Washington • Suite 214 • Tempe, Arizona 85288
Phone 480-894-1286 • Fax 480-968-4826
State of Arizona B-01 General Contractor License No. ROC072969

Docusign Envelope ID: C409525E-B004-4B7E-97B8-28F4207FB021

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

DocuSigned by:
Andrea Piering
8F6A9C89E0AE4BB...

Andrea Piering, President

Sun State Builders

Established September 1973
General Contractor • Construction Management • Development
1050 West Washington • Suite 214 • Tempe, Arizona 85288
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State of Arizona B-01 General Contractor License No. ROC072969

October 21, 2024

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RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair, Council Members, and Members of the Governor's Regulatory Review Council,

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

October 21, 2024

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Dear Chair and Council Members:

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I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Earnhardt Ranches, LLC | 7300 W. Orchid Ln, Chandler, AZ 85226
480-783-4620

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Hal J. Earnhardt, III

President, Earnhardt Ranches, LLC

PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

ANDERSON RD 80, LLC
10.21.24

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
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Rana Lashgari, Council Member (at-large)

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Dear Chair and Council Members,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc., which manages properties in Pinal County, and on behalf of ANDERSON RD 80, LLC, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of ANDERSON RD 80, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

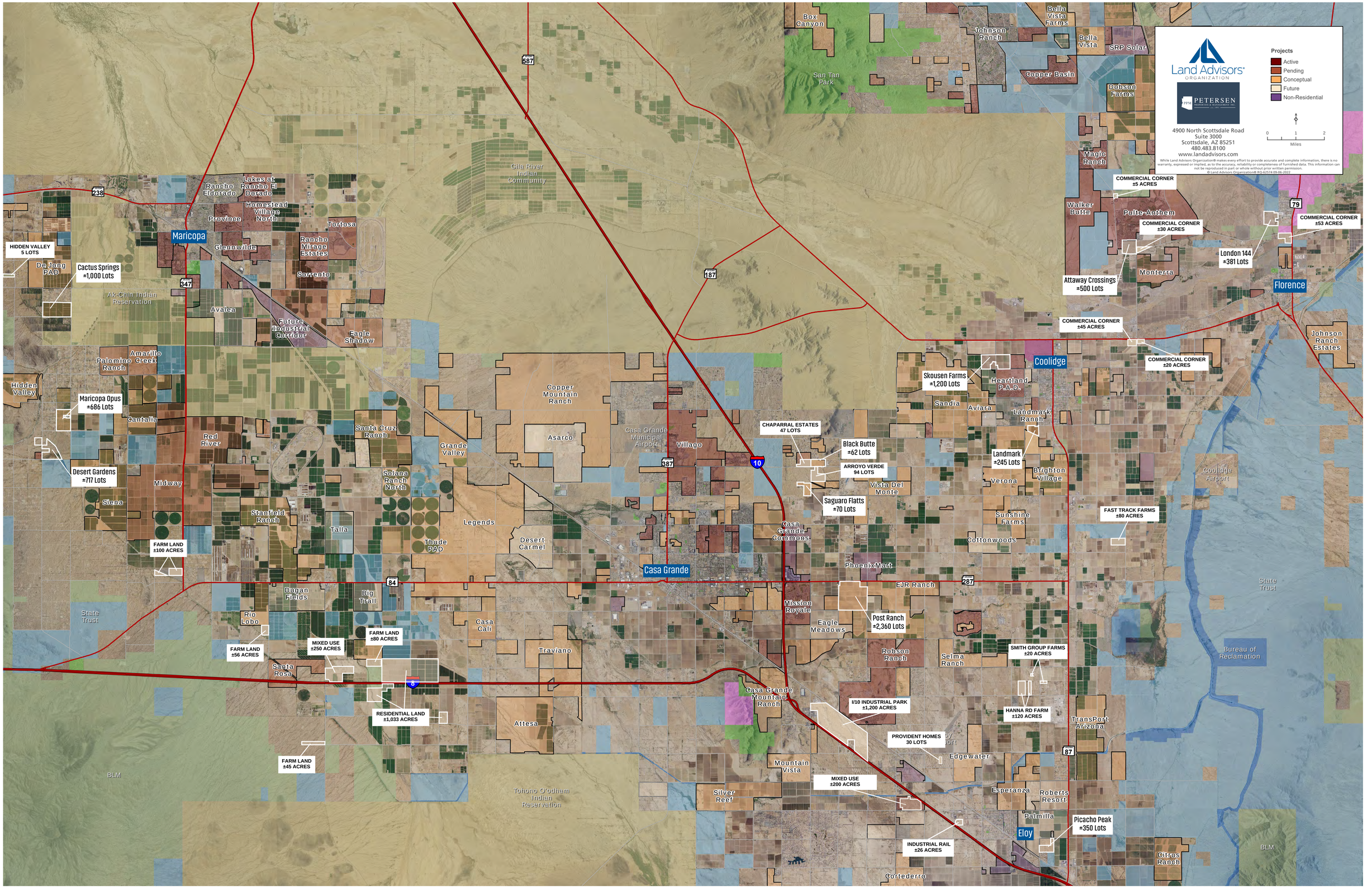
Sincerely,

Tanner Petersen
Manager, **ANDERSON RD 80, LLC**

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

3369 E. Queen Creek Rd, Ste 101
Gilbert, AZ 85297
www.PPMLand.com


Land Advisors ORGANIZATION
PETERSEN
4900 North Scottsdale Road
Suite 3000
Scottsdale, AZ 85251
480.483.8100
www.landadvisors.com
Projects
Active
Pending
Conceptual
Future
Non-Residential
0 1 2
Miles
Maricopa
Casa Grande
Coolidge
Florence
Eloy
HIDDEN VALLEY 5 LOTS
Cactus Springs ±1,000 Lots
Maricopa Opus ±686 Lots
Desert Gardens ±717 Lots
FARM LAND ±100 ACRES
FARM LAND ±56 ACRES
MIXED USE ±250 ACRES
FARM LAND ±80 ACRES
RESIDENTIAL LAND ±1,033 ACRES
FARM LAND ±45 ACRES
CHAPARRAL ESTATES 47 LOTS
Black Butte ±62 Lots
ARROYO VERDE 94 LOTS
Saguaro Flatts ±70 Lots
Post Ranch ±2,360 Lots
I/10 INDUSTRIAL PARK ±1,200 ACRES
PROVIDENT HOMES 30 LOTS
MIXED USE ±200 ACRES
INDUSTRIAL RAIL ±26 ACRES
SMITH GROUP FARMS ±20 ACRES
HANNA RD FARM ±120 ACRES
FAST TRACK FARMS ±80 ACRES
Skousen Farms ±1,200 Lots
Landmark ±245 Lots
Picacho Peak ±350 Lots
COMMERCIAL CORNER ±5 ACRES
COMMERCIAL CORNER ±30 ACRES
COMMERCIAL CORNER ±45 ACRES
COMMERCIAL CORNER ±20 ACRES
COMMERCIAL CORNER ±53 ACRES
Attaway Crossings ±500 Lots
London 144 ±381 Lots
Gila River Indian Community
Ak-Chin Indian Reservation
Tohono O'odham Indian Reservation
Copper Basin
Pulte-Anthem
Monterra
Heartland P.A.D.
Aviara
Landmark Ranch
Brighton Village
Verona
Vista Del Monte
Sunshine Farms
Cottonwoods
PhoenixMart
EJR Ranch
Mission Royale
Eagle Meadows
Robson Ranch
Selma Ranch
TransPort Arizona
Edgewater
Esperanza
Roberts Resort
Palmilla
Cortederro
Citrus Ranch
Coolidge Airport
Casa Grande Municipal Airport
Casa Grande Mountain Ranch
Casa Grande Commons
Copper Mountain Ranch
Johnson Ranch Estates
State Trust
Bureau of Reclamation
BLM

PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Arroyo Verde 35, LLC
10.21.24

Governor's Regulatory Review Council
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I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc., which manages properties in Pinal County, and on behalf of Arroyo Verde 35, LLC, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

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On behalf of Arroyo Verde 35, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Arroyo Verde 35, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

3369 E. Queen Creek Rd, Ste 101
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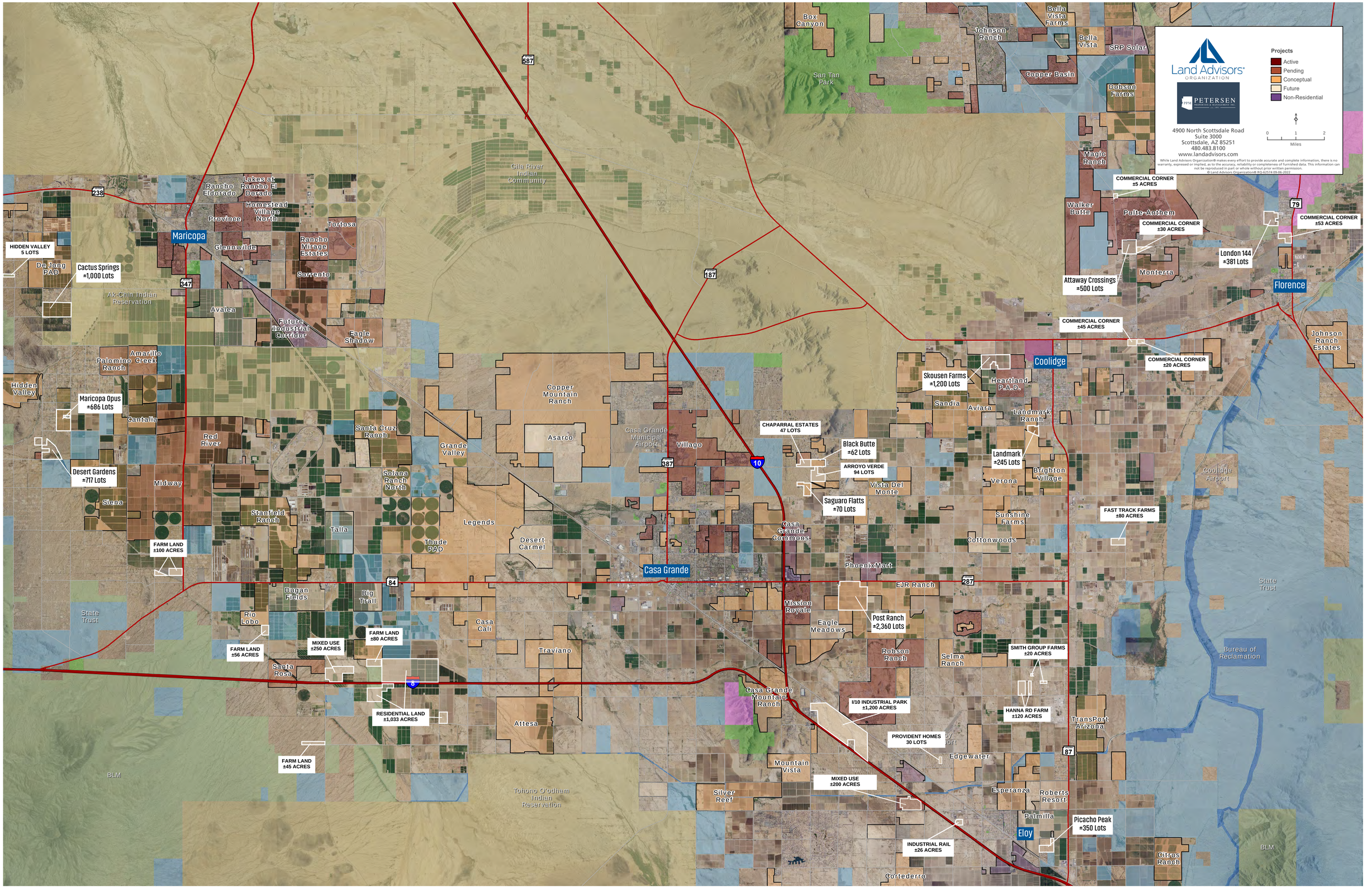
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Attaway & 287, LLC
10.21.24

Governor's Regulatory Review Council
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Jessica Klein, Chair
Frank Thorwald, Council Member
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RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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On behalf of Attaway & 287, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Attaway & 287, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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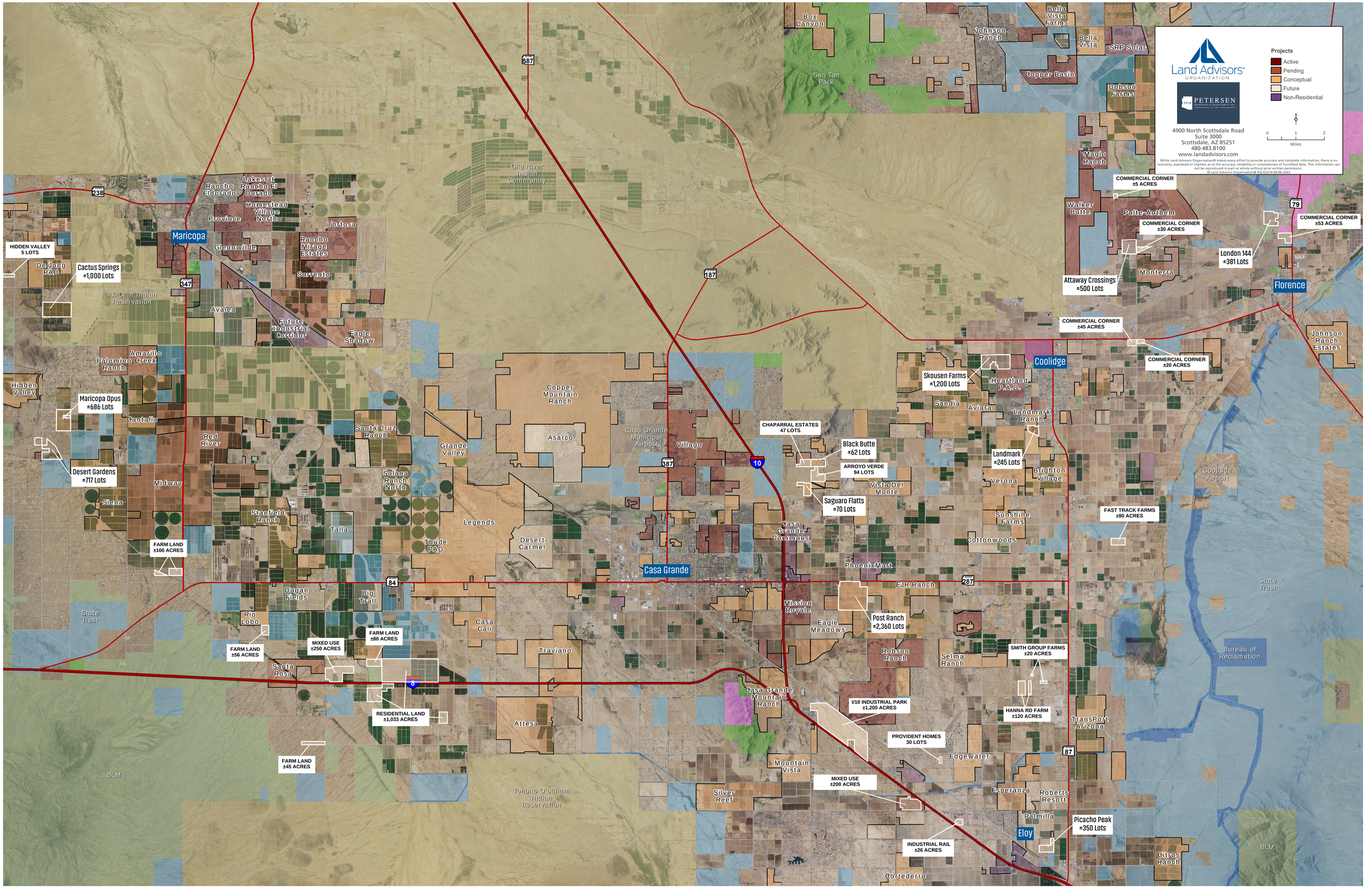
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Attaway Crossings 147, LLC
10.21.24

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On behalf of Attaway Crossings 147, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Attaway Crossings 147, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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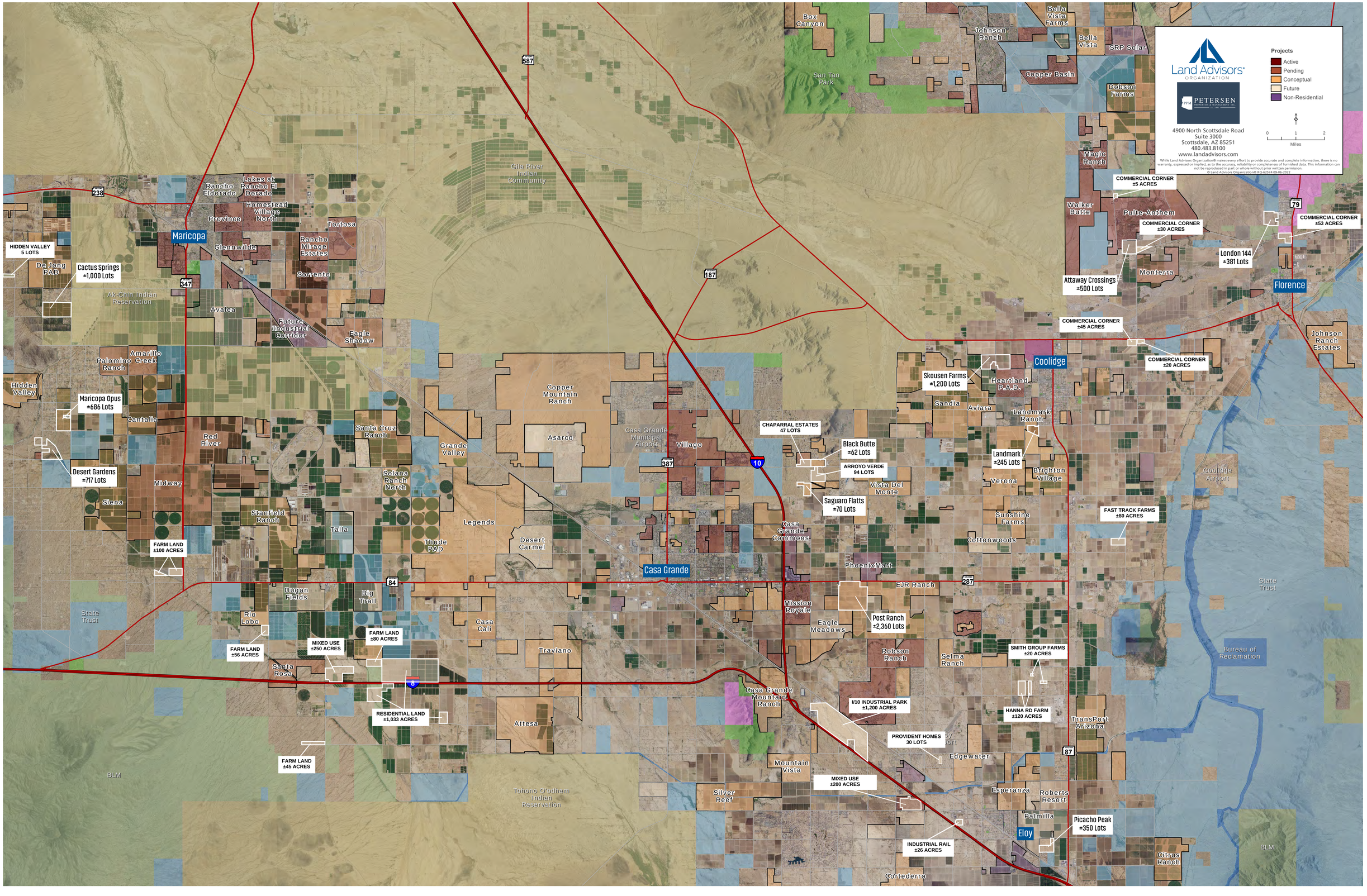
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Black Butte 80, LLC
10.21.24

Governor's Regulatory Review Council
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Phoenix, AZ 85007

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On behalf of Black Butte 80, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Black Butte 80, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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Gilbert, AZ 85297
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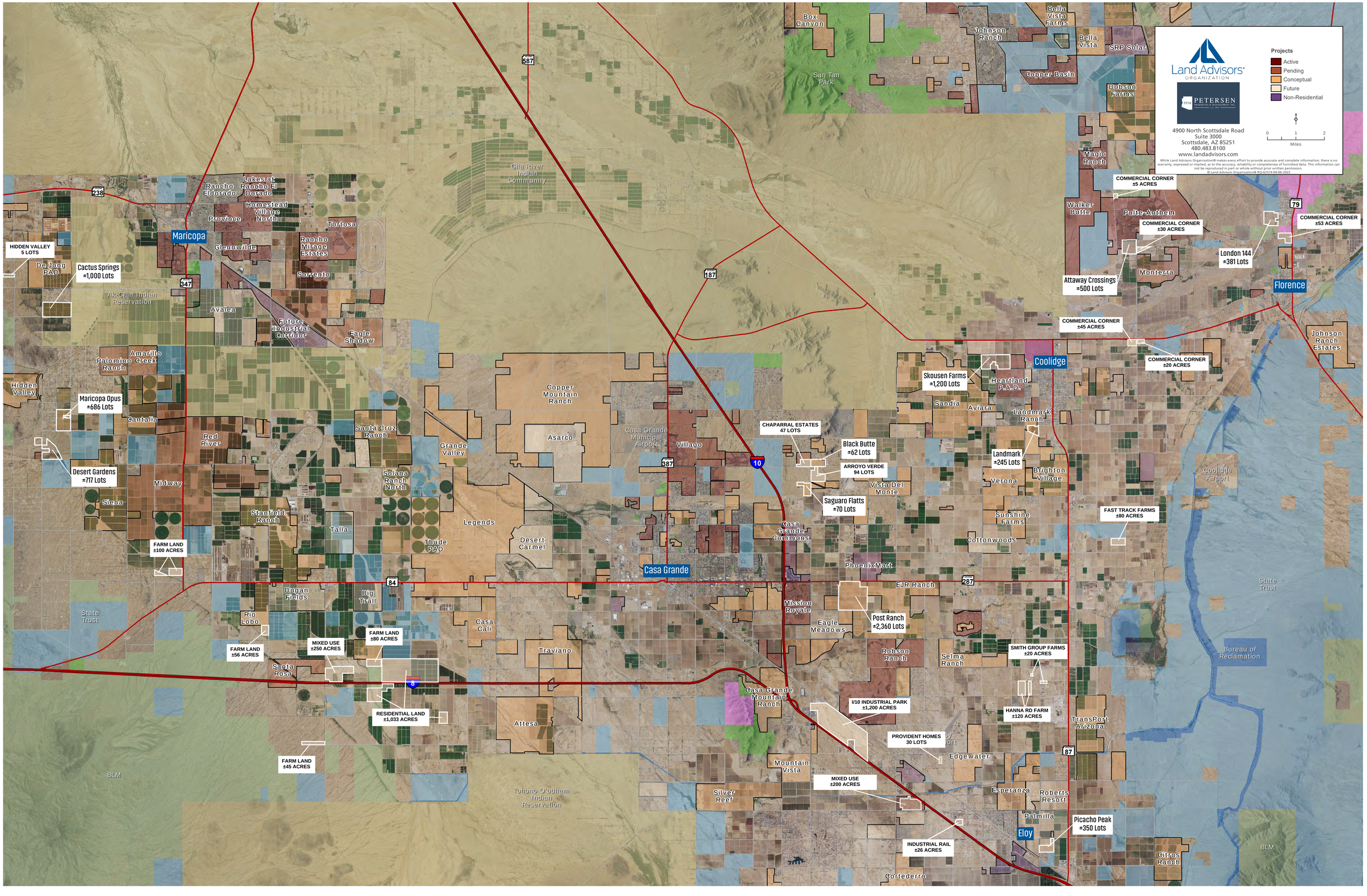
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Cactus Springs, LLC
10.21.24

Governor's Regulatory Review Council
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On behalf of Cactus Springs, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Cactus Springs, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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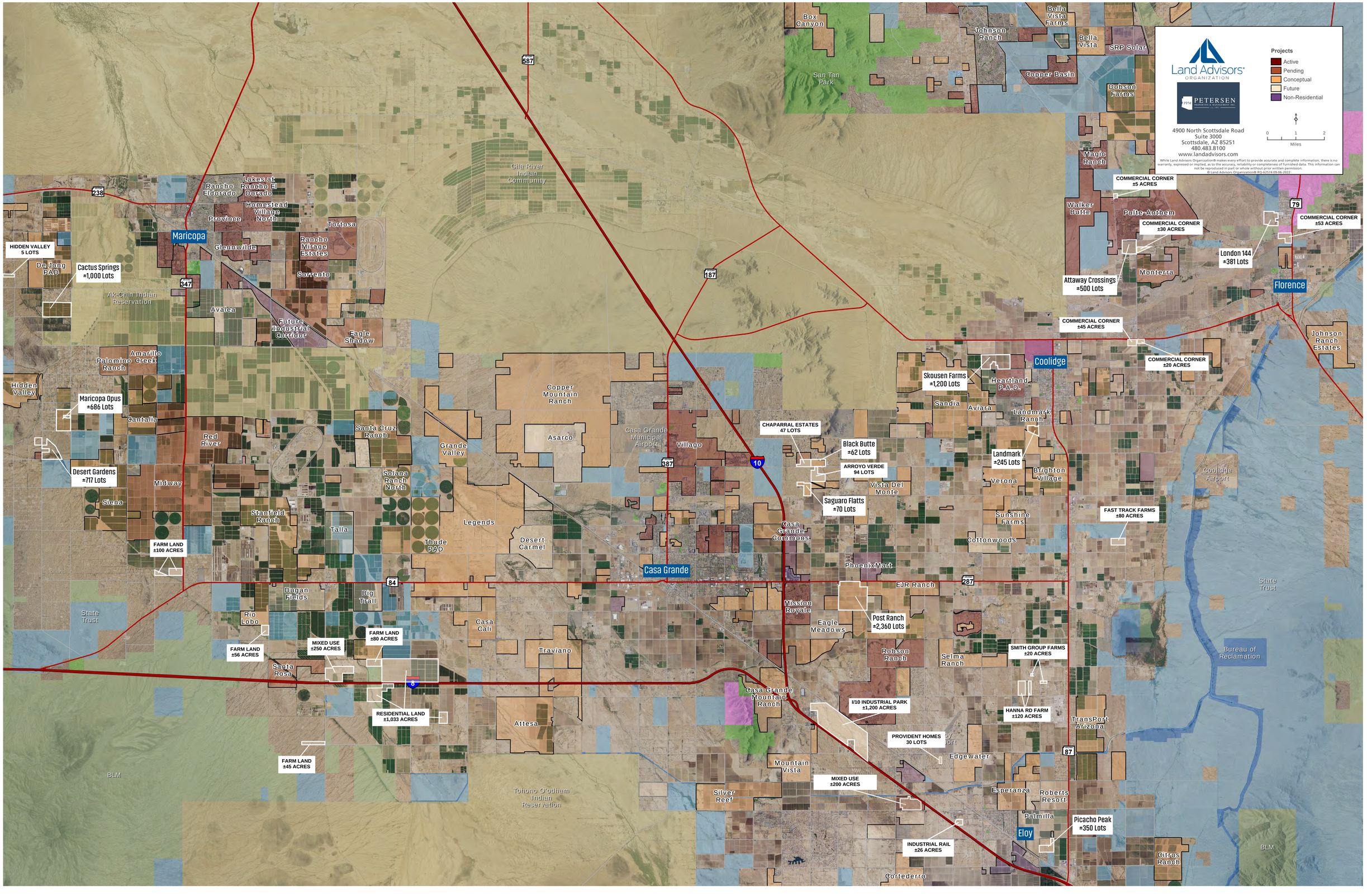
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Chaparral 13, LLC
10.21.24

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On behalf of Chaparral 13, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Chaparral 13, LLC

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(c) 602.540.8151
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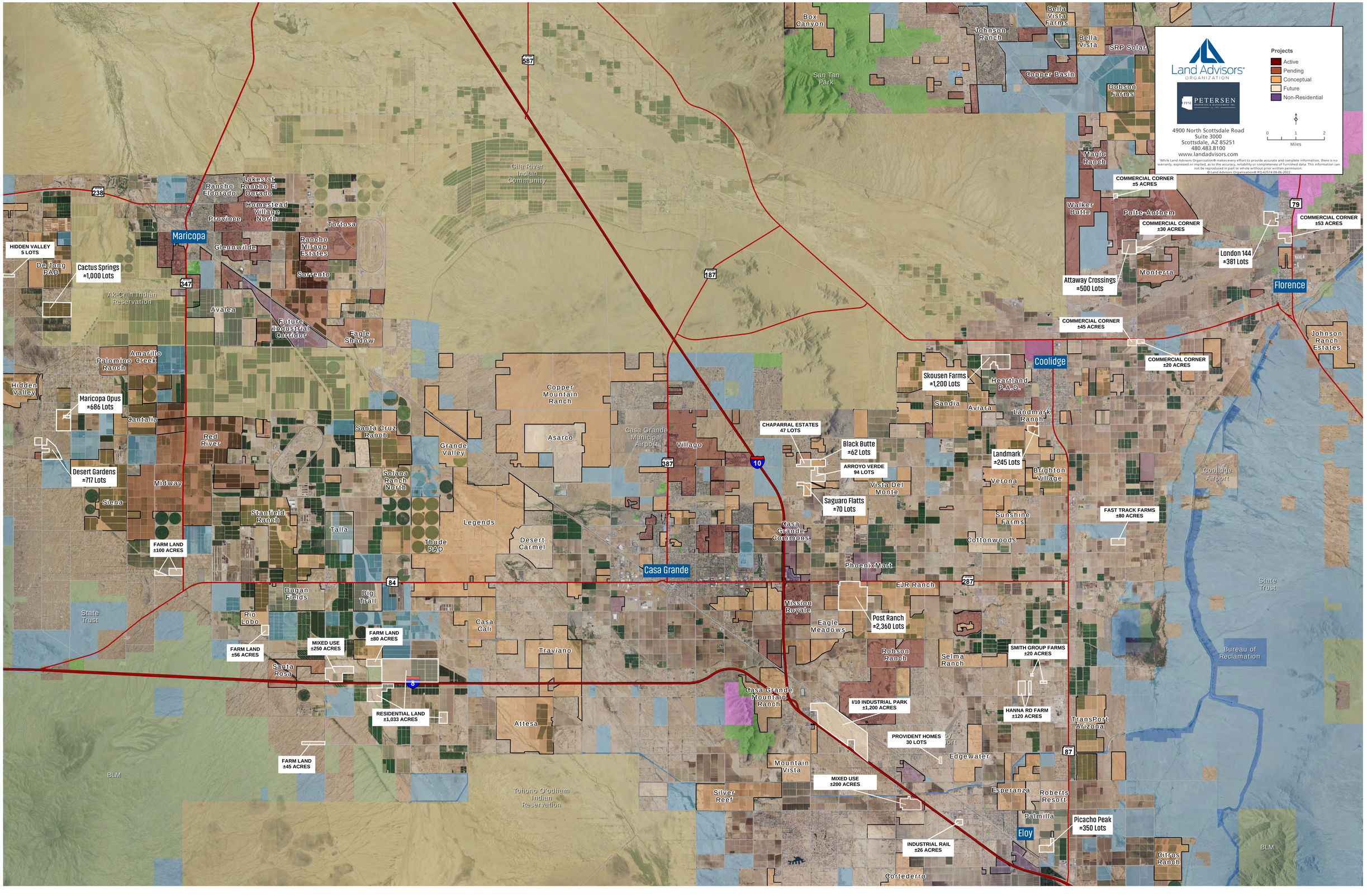
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Skousen Farms ±1,200 Lots
Landmark ±245 Lots
Picacho Peak ±350 Lots
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Cortederro
Citrus Ranch
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Casa Grande Mountain Ranch
Casa Grande Commons
Copper Mountain Ranch
Johnson Ranch Estates
State Trust
Bureau of Reclamation
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PETERSEN
PROPERTIES & MANAGEMENT INC.
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Fast Track Rd 80, LLC
10.21.24

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair and Council Members,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc., which manages properties in Pinal County, and on behalf of Fast Track Rd 80, LLC, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of Fast Track Rd 80, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Fast Track Rd 80, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

3369 E. Queen Creek Rd, Ste 101
Gilbert, AZ 85297
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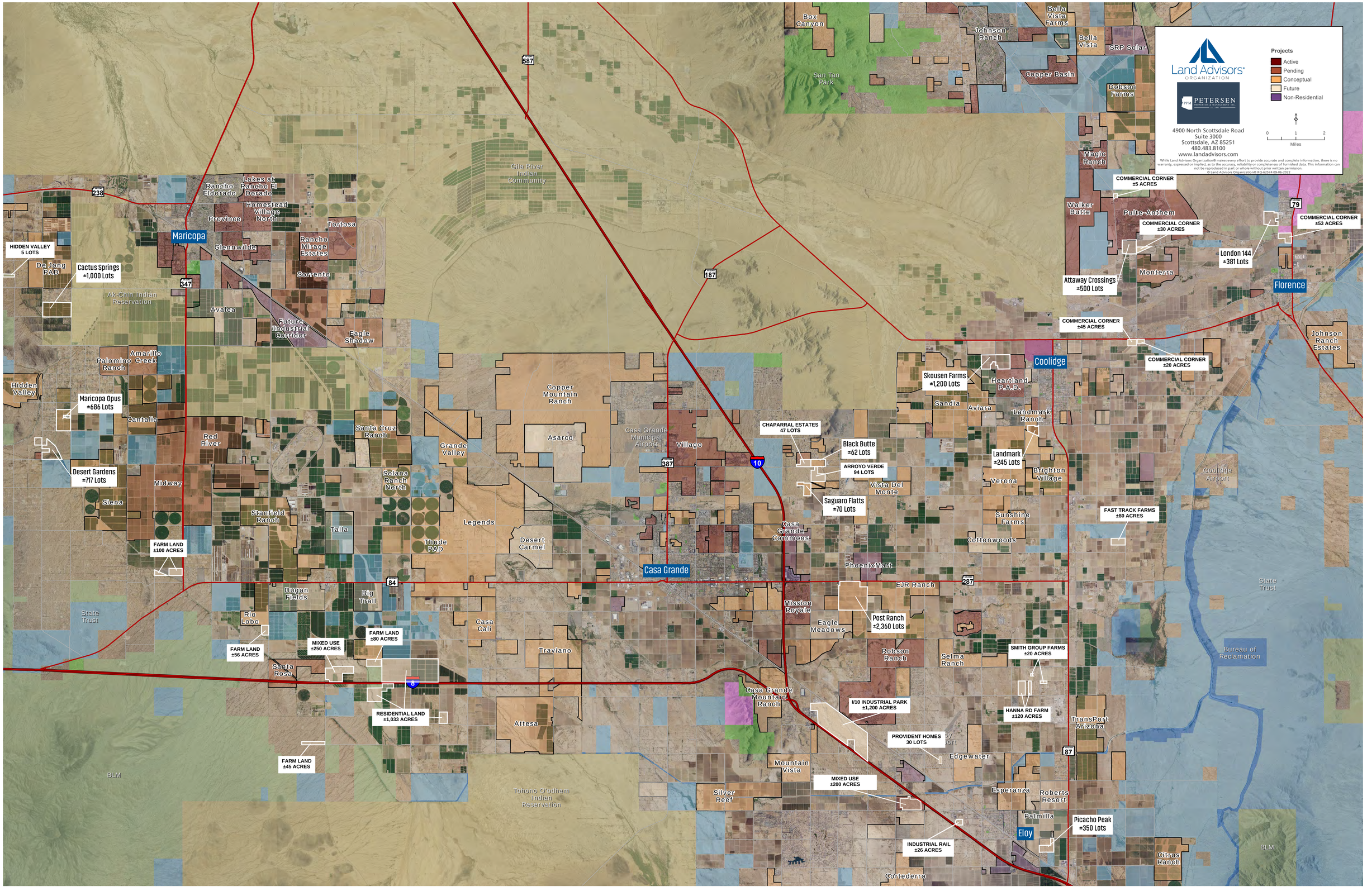
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Johnson Ranch Estates
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Florence PG 53, LLC
10.21.24

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
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Rana Lashgari, Council Member (at-large)

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Dear Chair and Council Members,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc., which manages properties in Pinal County, and on behalf of Florence PG 53, LLC, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of Florence PG 53, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Florence PG 53, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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Gilbert, AZ 85297
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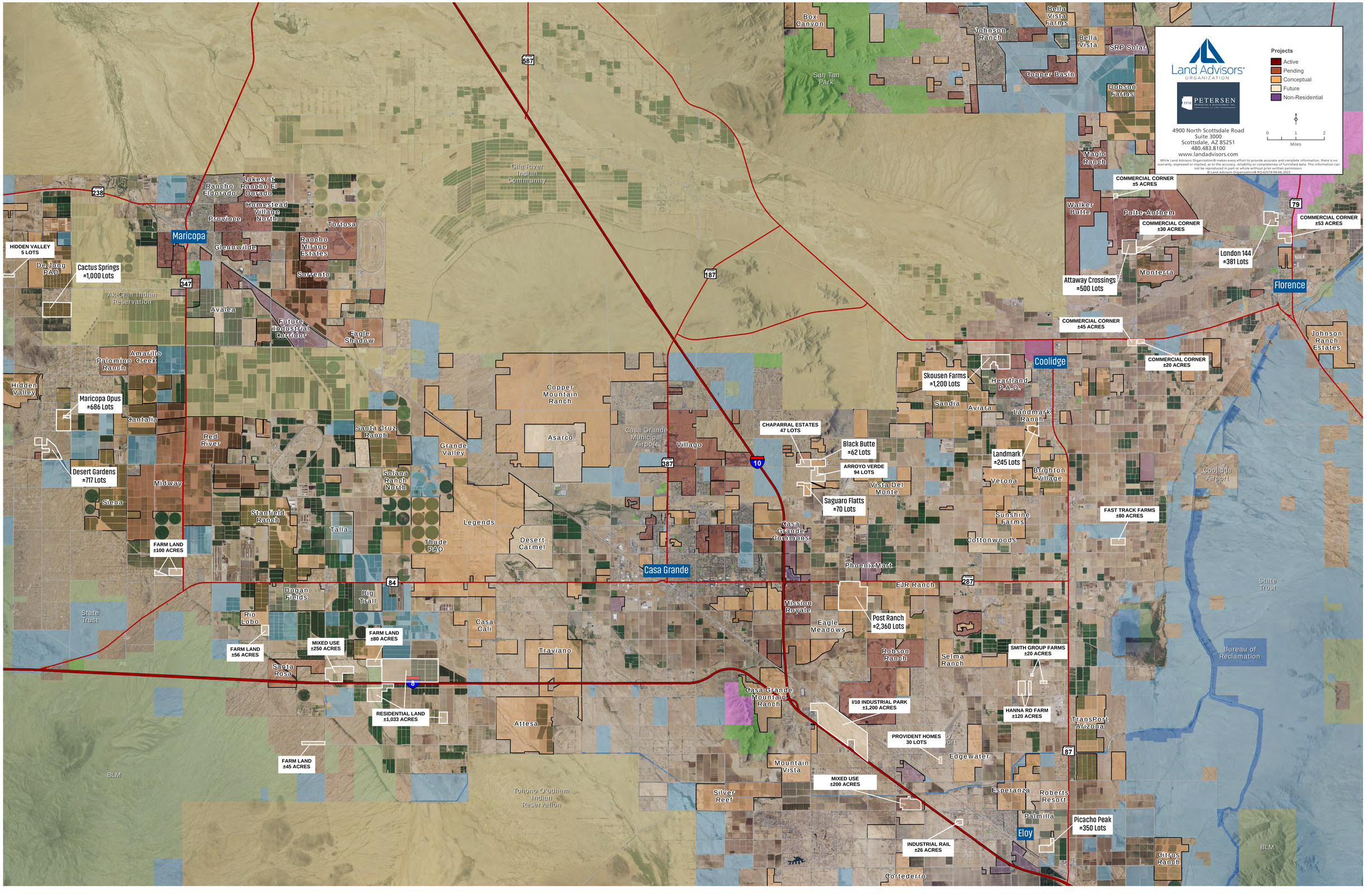
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Copper Mountain Ranch
Johnson Ranch Estates
State Trust
Bureau of Reclamation
BLM

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Hanna Rd 120, LLC
10.21.24

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
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John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair and Council Members,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc., which manages properties in Pinal County, and on behalf of Hanna Rd 120, LLC, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

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On behalf of Hanna Rd 120, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Hanna Rd 120, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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Gilbert, AZ 85297
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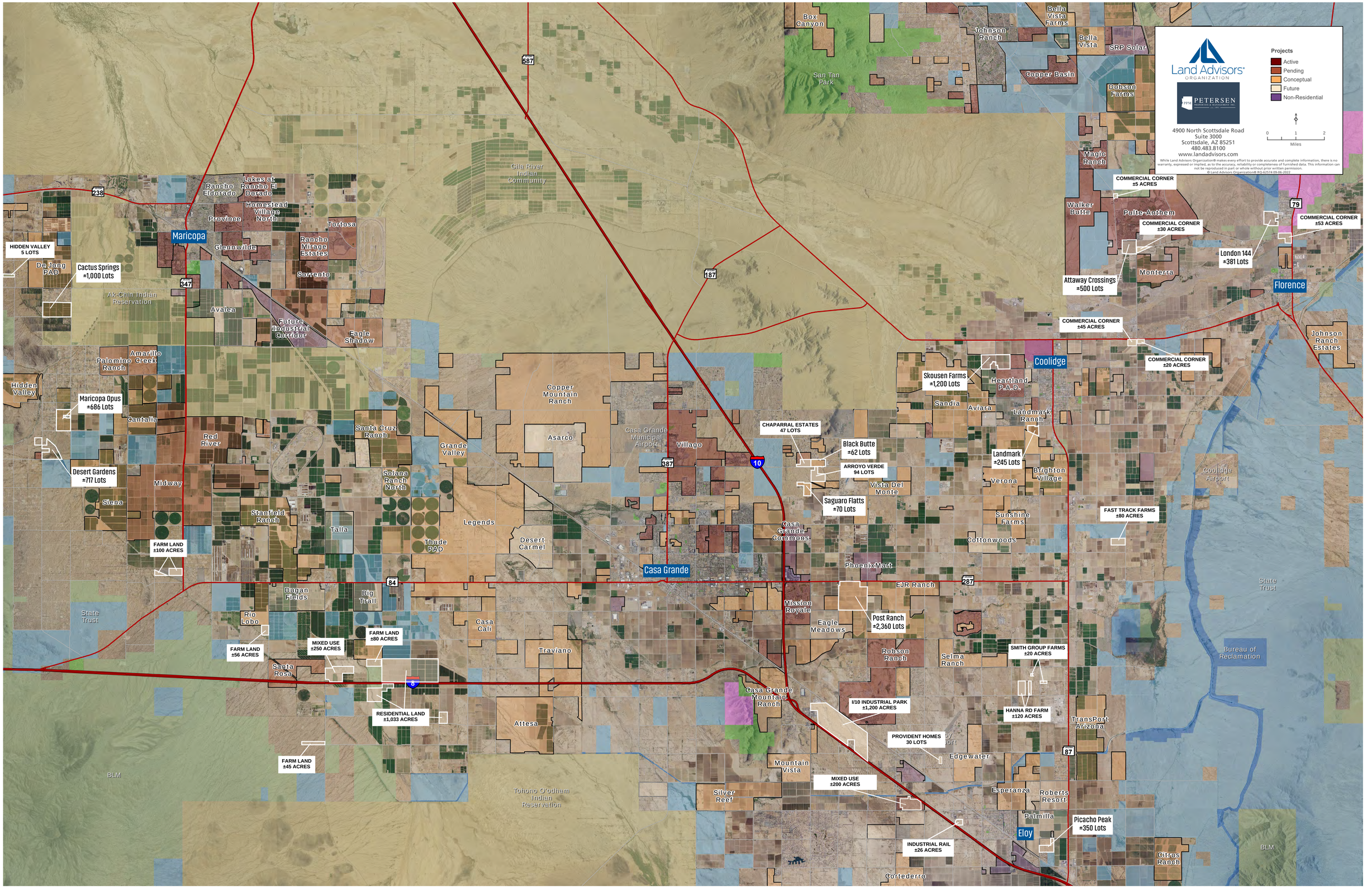
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Casa Grande Commons
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Johnson Ranch Estates
State Trust
Bureau of Reclamation
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Heritage Creek 141, LLC
10.21.24

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair and Council Members,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc., which manages properties in Pinal County, and on behalf of Heritage Creek 141, LLC, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

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On behalf of Heritage Creek 141, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Heritage Creek 141, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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Gilbert, AZ 85297
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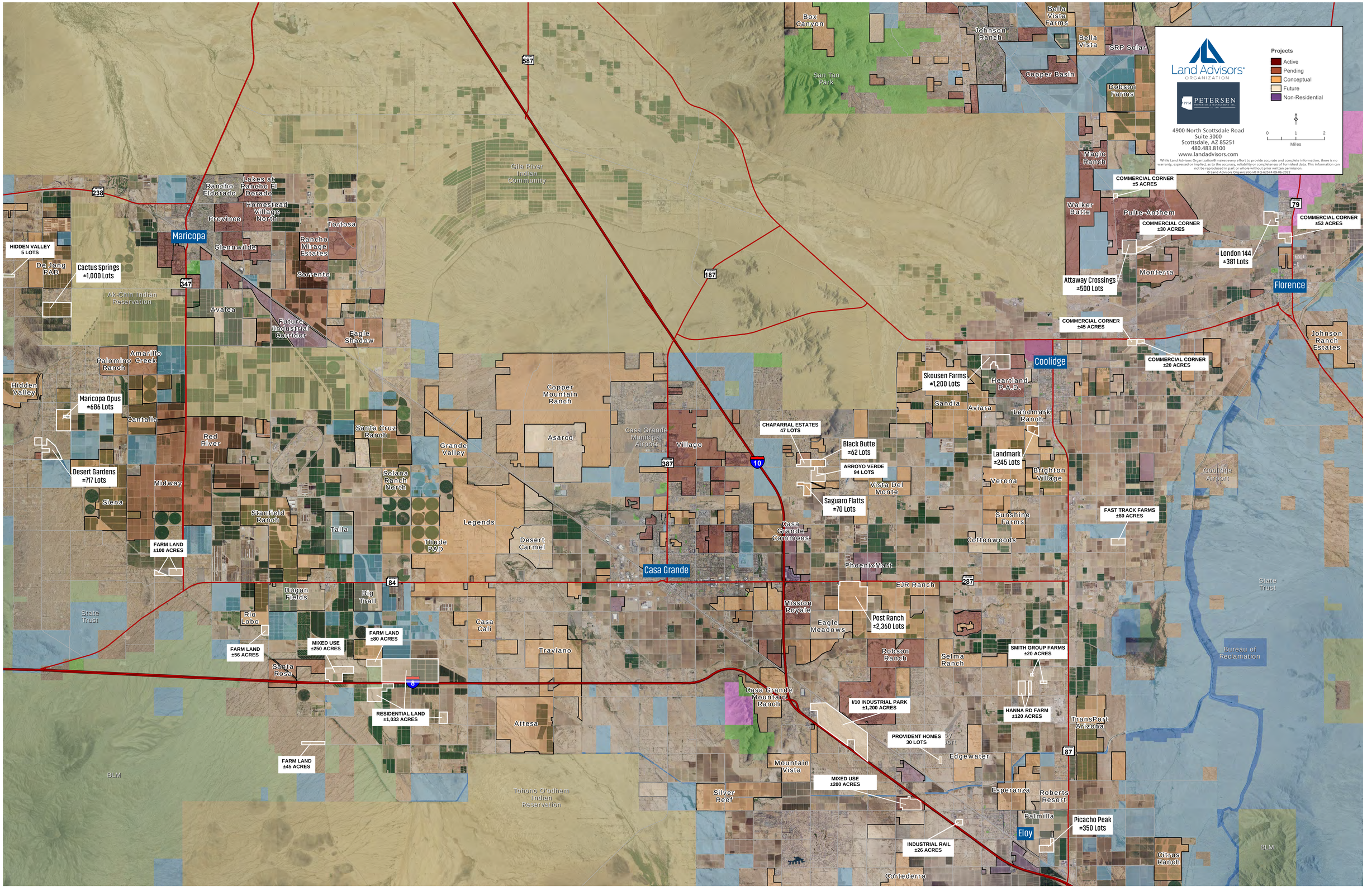
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Johnson Ranch Estates
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PETERSEN
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Hidden Valley Rd 30, LLC
10.21.24

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
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John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair and Council Members,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc., which manages properties in Pinal County, and on behalf of Hidden Valley Rd 30, LLC, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

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On behalf of Hidden Valley Rd 30, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Hidden Valley Rd 30, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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Gilbert, AZ 85297
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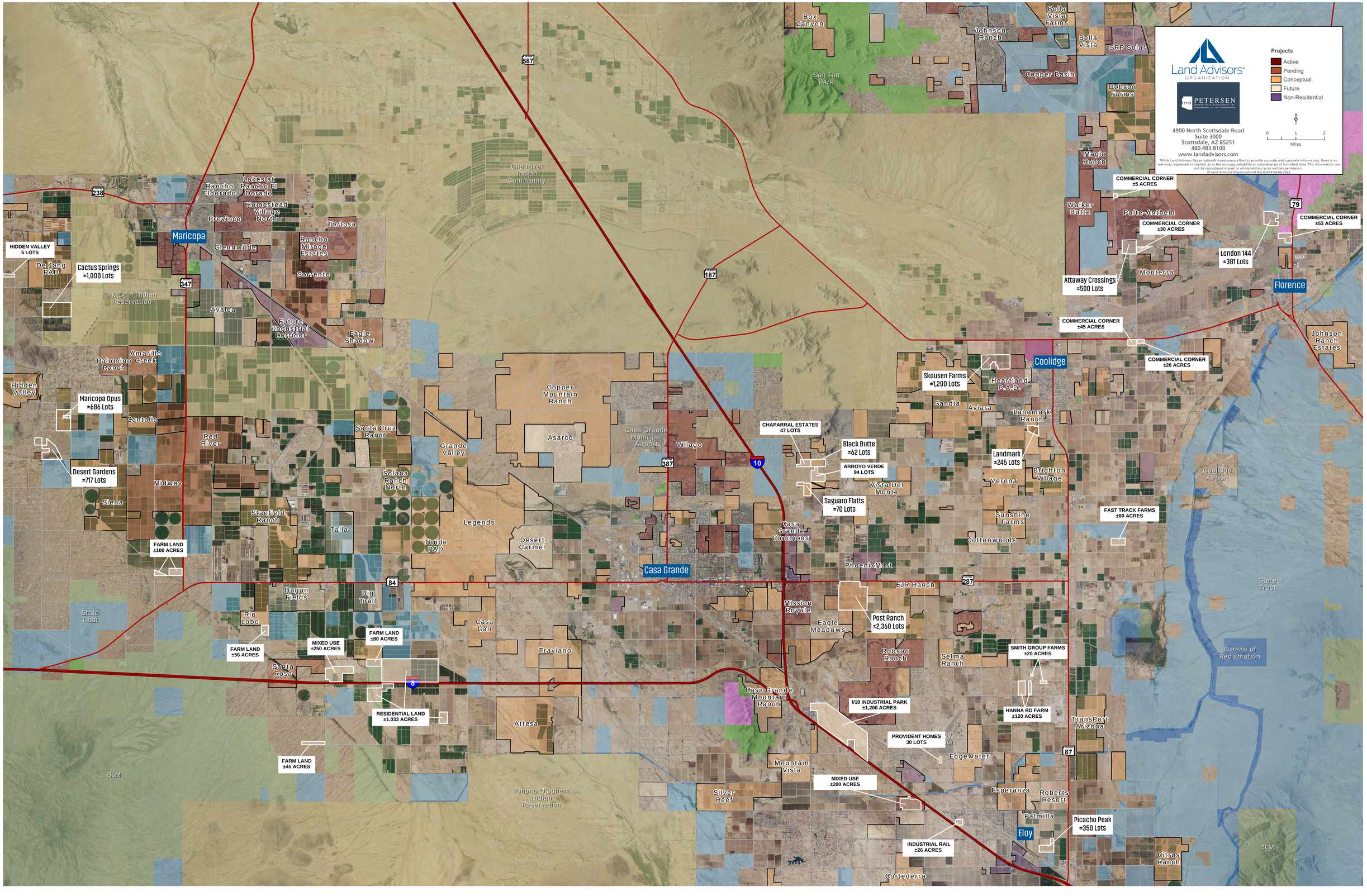
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Hunt East 30, LLC
10.21.24

Governor's Regulatory Review Council
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These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of Hunt East 30, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Hunt East 30, LLC

(o) 480.545.2208
(c) 602.540.8151
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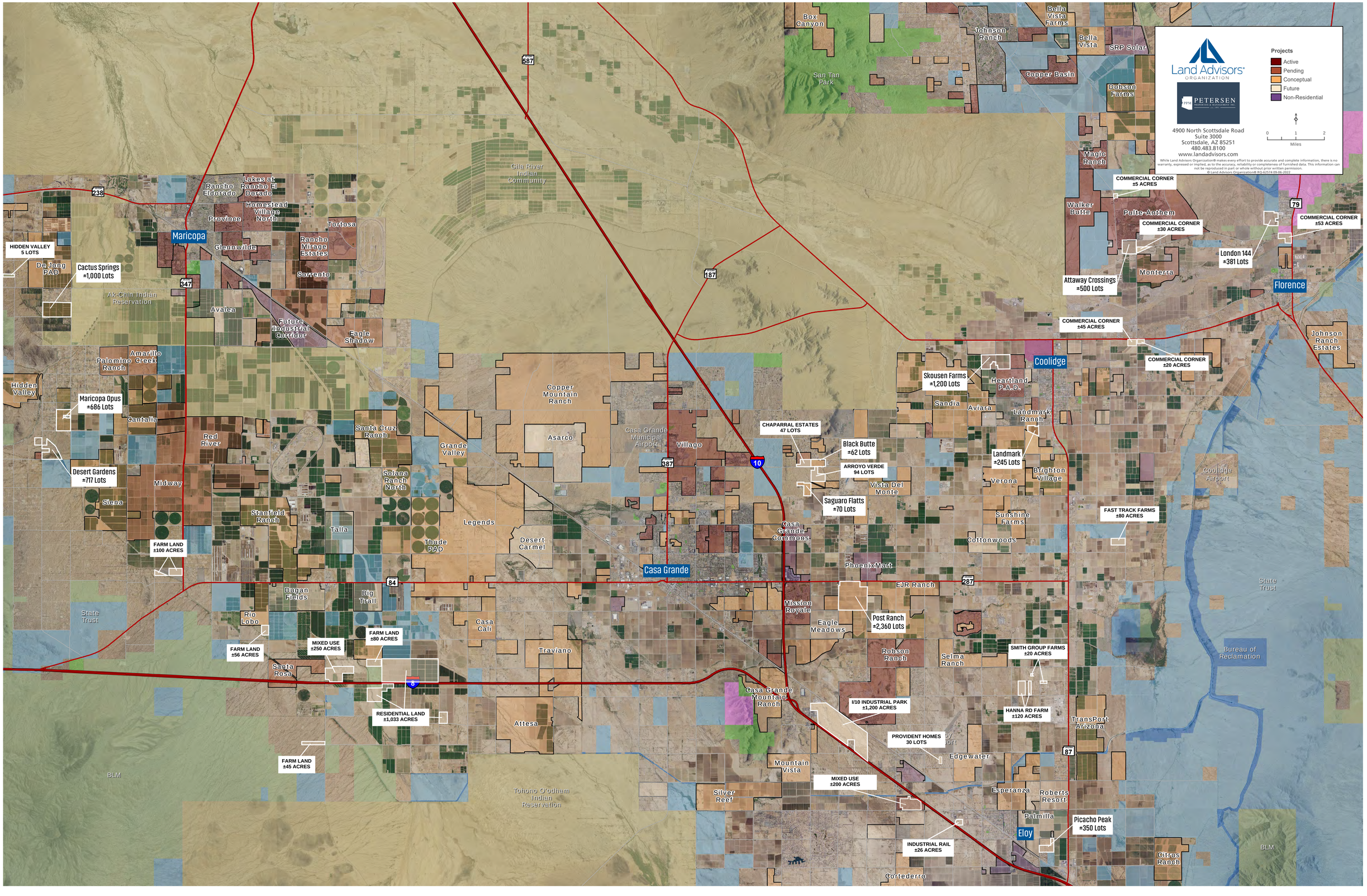
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Miles
Maricopa
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HIDDEN VALLEY 5 LOTS
Cactus Springs ±1,000 Lots
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PROPERTIES & MANAGEMENT INC.
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Hunt Highway Commercial, LLC
10.21.24

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
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Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair and Council Members,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc., which manages properties in Pinal County, and on behalf of Hunt Highway Commercial, LLC, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of Hunt Highway Commercial, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Hunt Highway Commercial, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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Gilbert, AZ 85297
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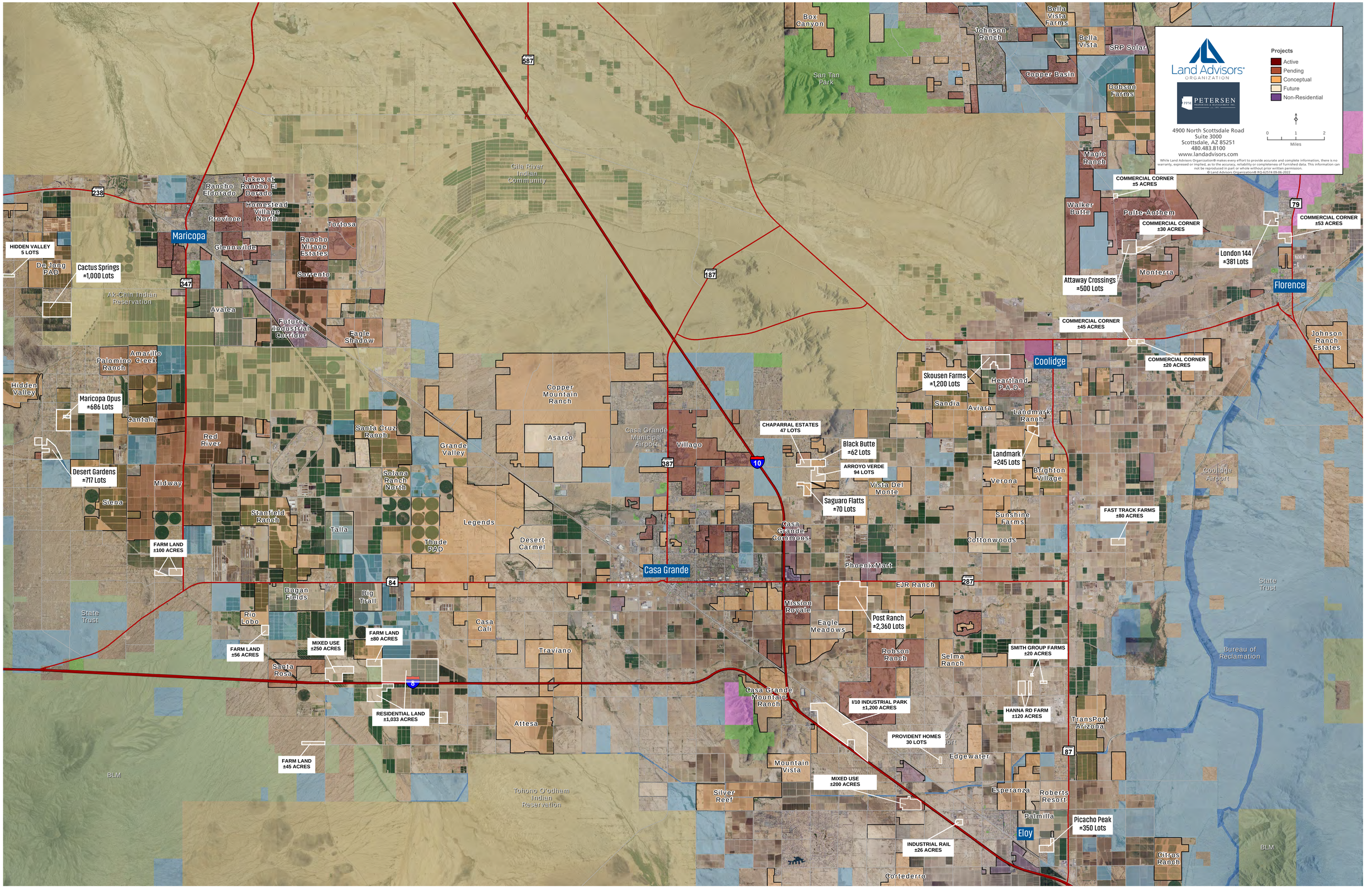
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Landmark 65, LLC
10.21.24

Governor's Regulatory Review Council
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Phoenix, AZ 85007

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Rana Lashgari, Council Member (at-large)

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Dear Chair and Council Members,

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A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of Landmark 65, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Landmark 65, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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Gilbert, AZ 85297
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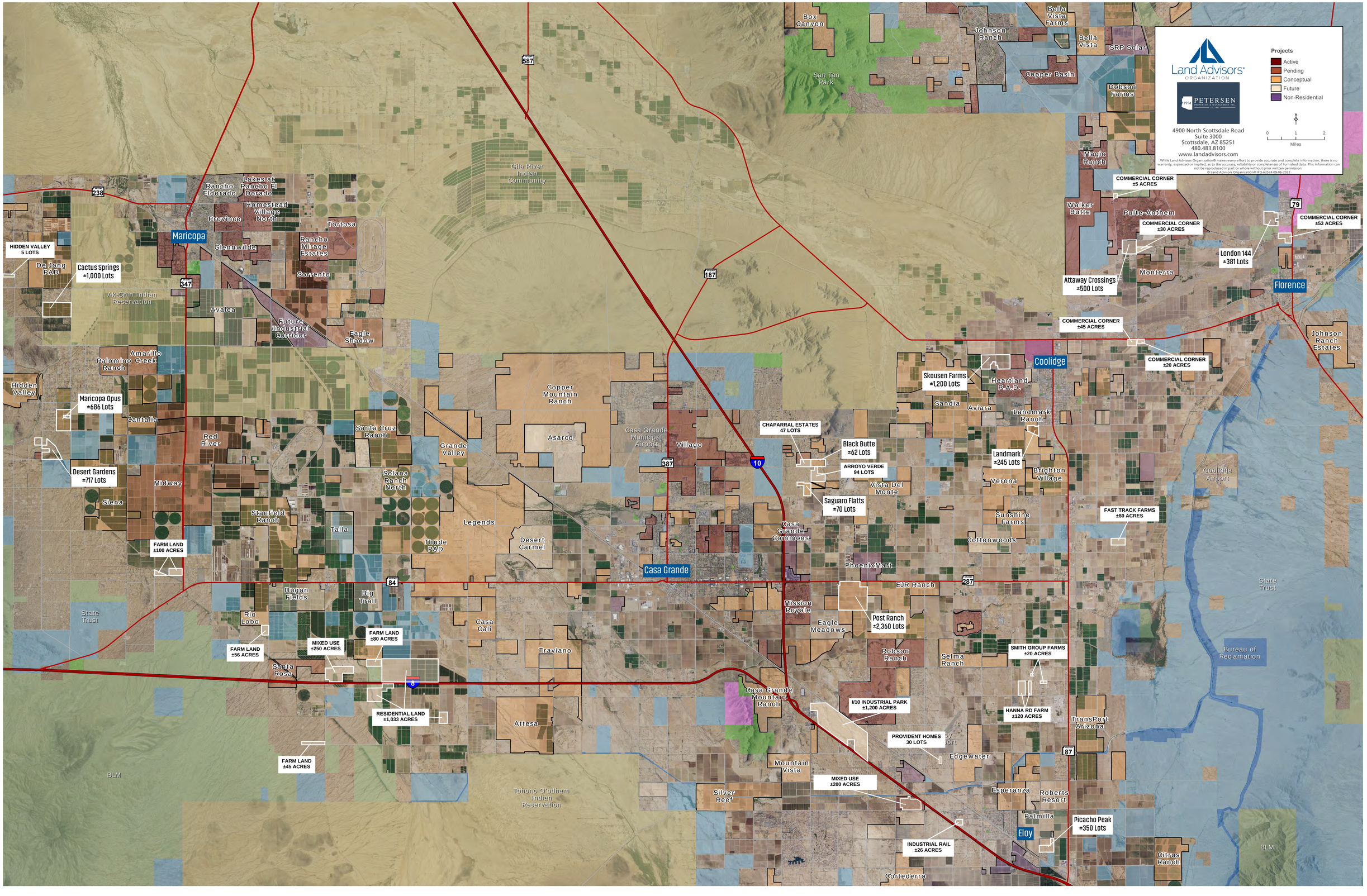
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Maricopa Opus 226, LLC
10.21.24

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On behalf of Maricopa Opus 226, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Maricopa Opus 226, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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Gilbert, AZ 85297
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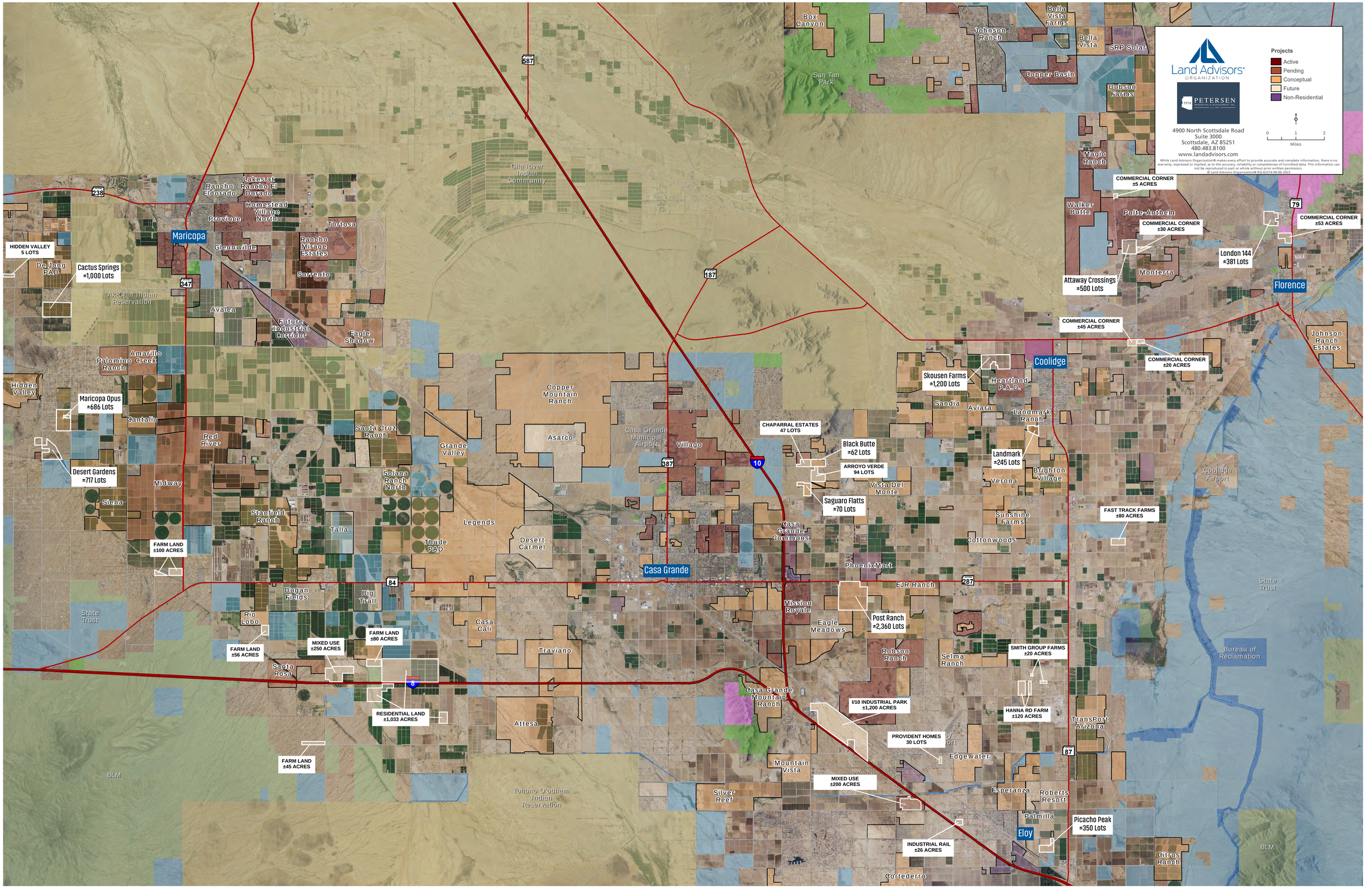
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Nuttall 89, LLC
10.21.24

Governor's Regulatory Review Council
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Phoenix, AZ 85007

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On behalf of Nuttall 89, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Nuttall 89, LLC

(o) 480.545.2208
(c) 602.540.8151
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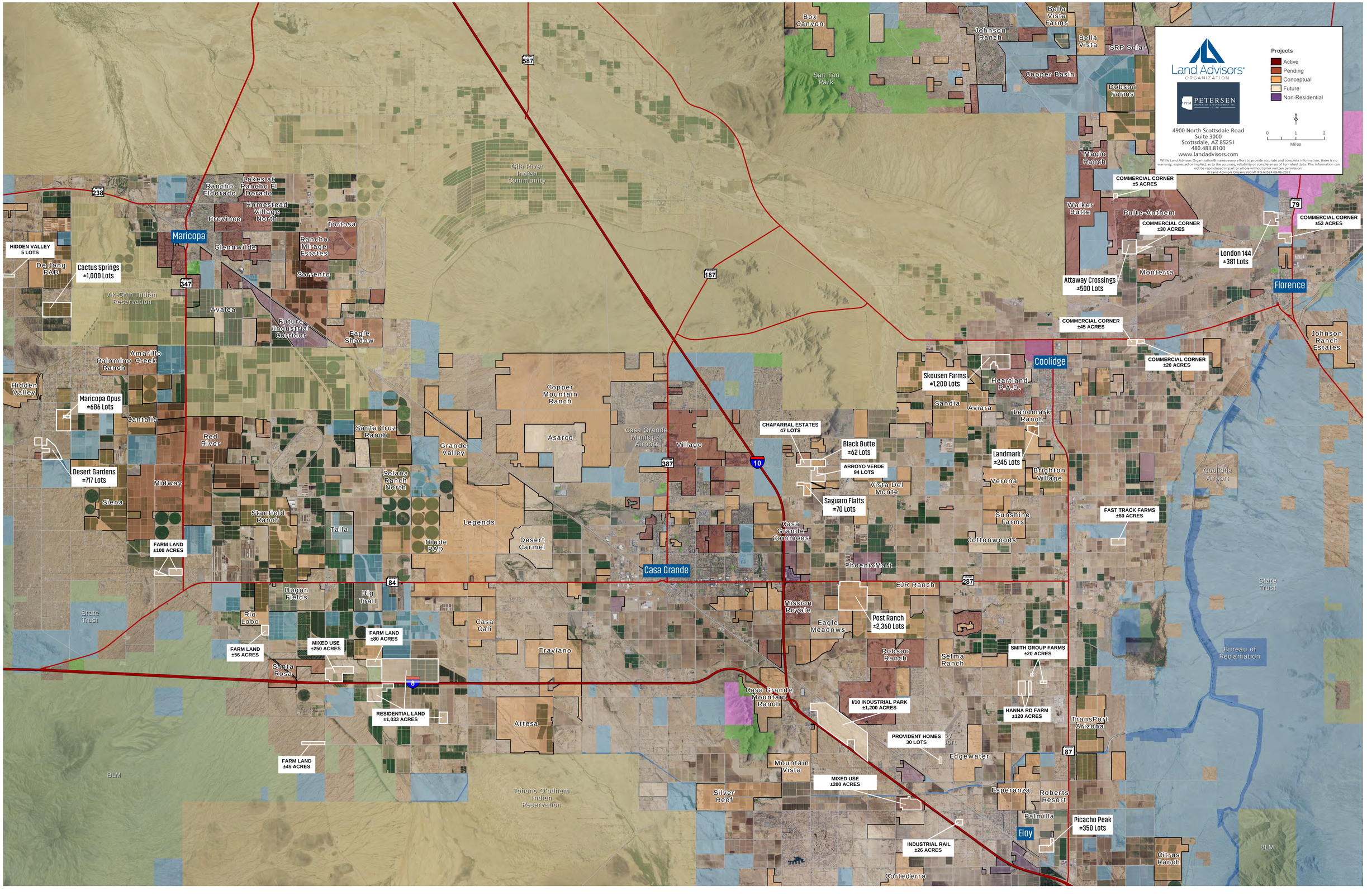
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Petersen Arizona Land & Entitlement Fund, LLC
10.21.24

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On behalf of Petersen Arizona Land & Entitlement Fund, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Petersen Arizona Land & Entitlement Fund, LLC

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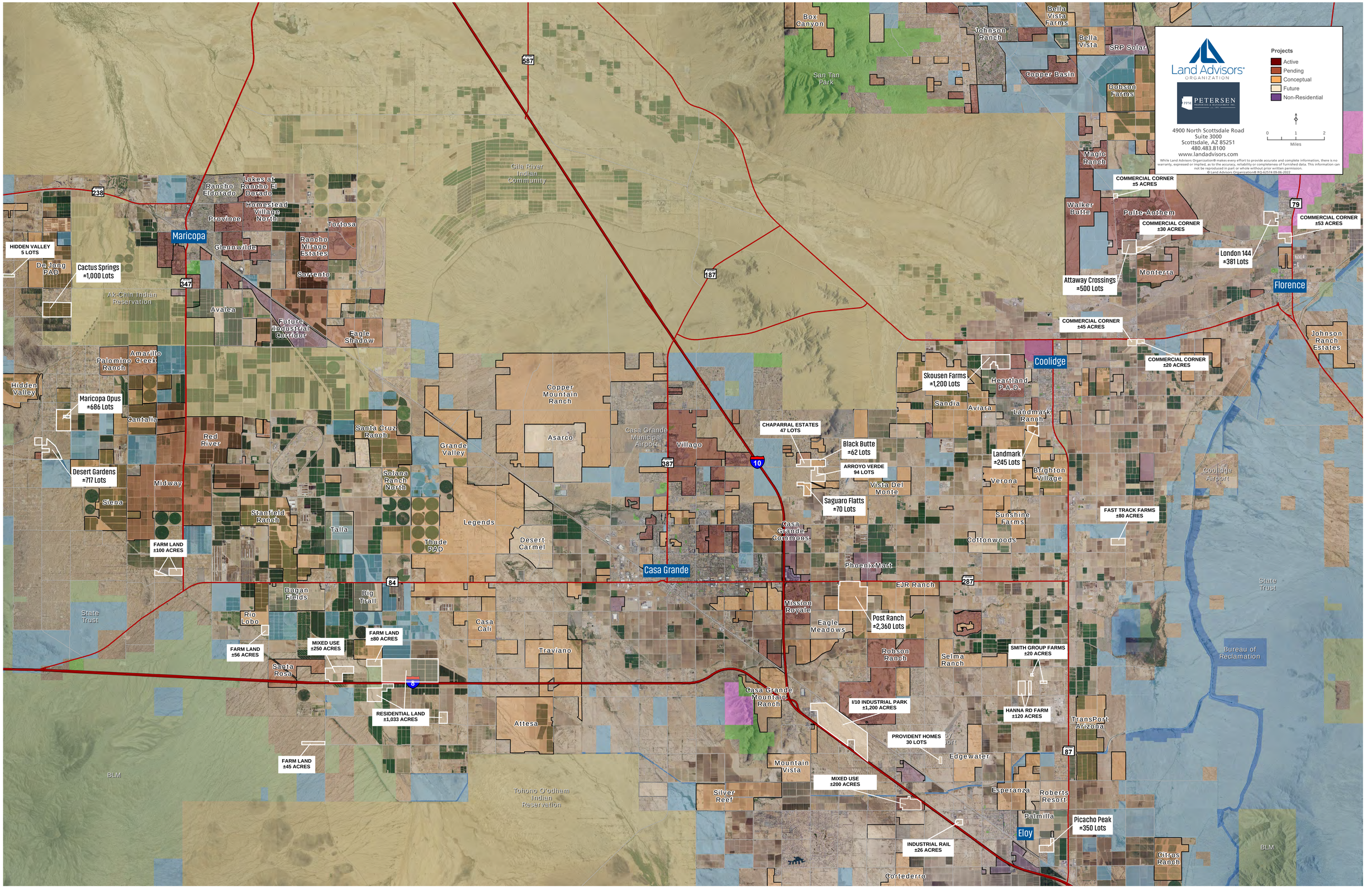
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John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair and Council Members,

I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc., which manages properties in Pinal County, and on behalf of Petersen Eloy 501, LLC, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of Petersen Eloy 501, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Petersen Eloy 501, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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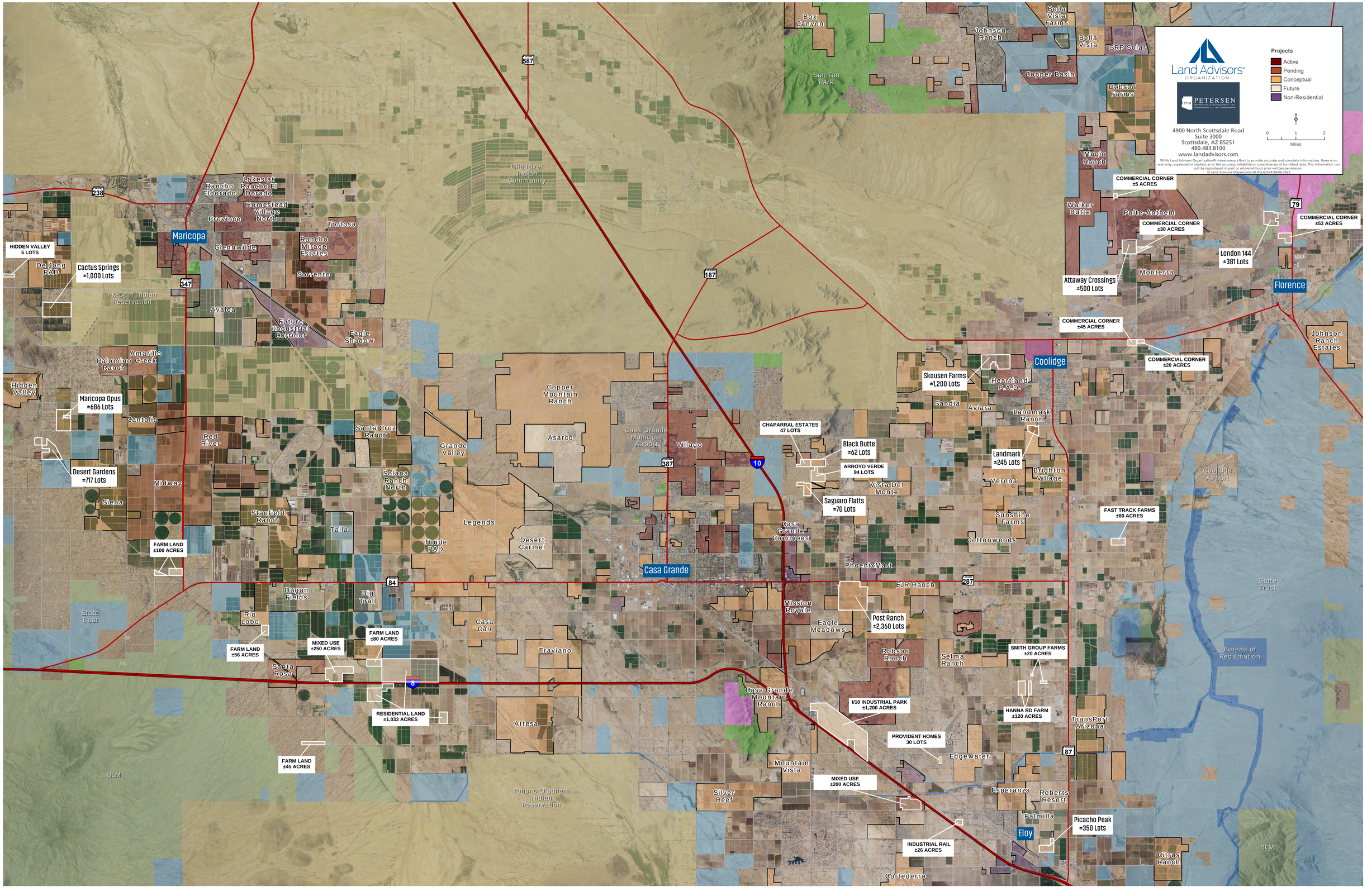
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PROPERTIES & MANAGEMENT INC.
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Petersen Vekol Group, LLC
10.21.24

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On behalf of Petersen Vekol Group, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Petersen Vekol Group, LLC

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(c) 602.540.8151
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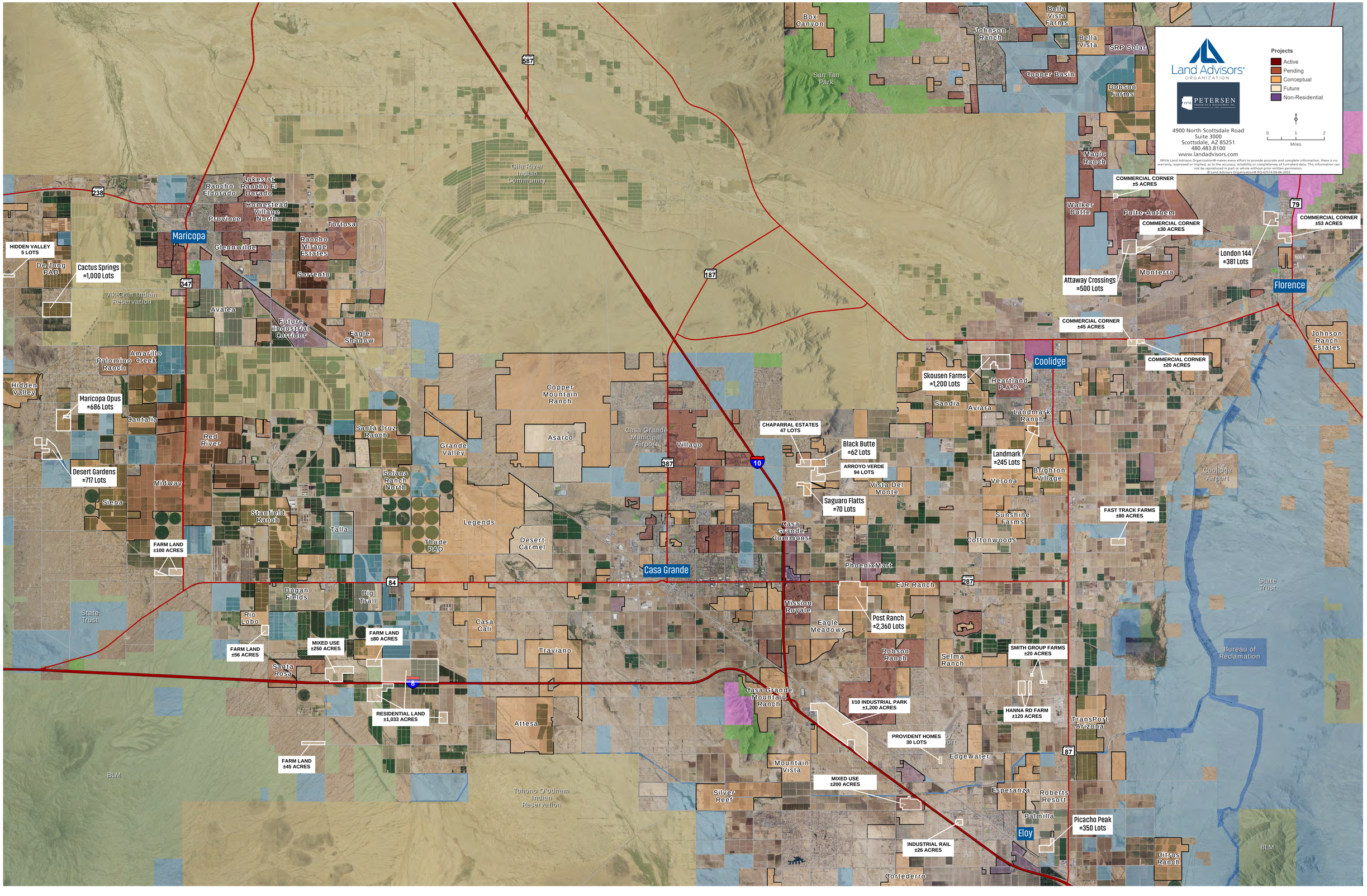
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Picacho Peak, LLC
10.21.24

Governor's Regulatory Review Council
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On behalf of Picacho Peak, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Picacho Peak, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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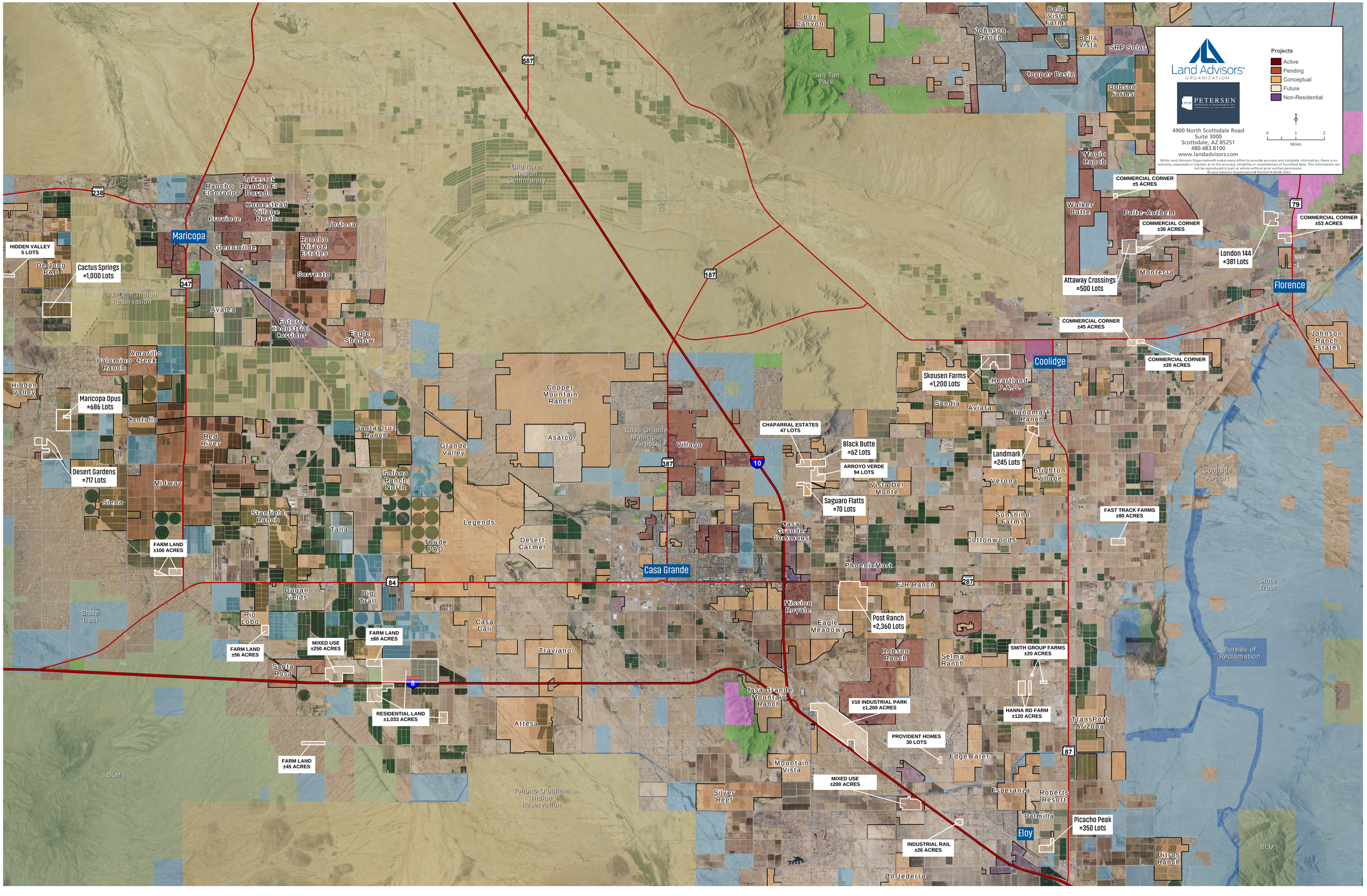
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Post Ranch 589, LLC
10.21.24

Governor's Regulatory Review Council
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Phoenix, AZ 85007

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On behalf of Post Ranch 589, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Post Ranch 589, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

PPM

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Gilbert, AZ 85297
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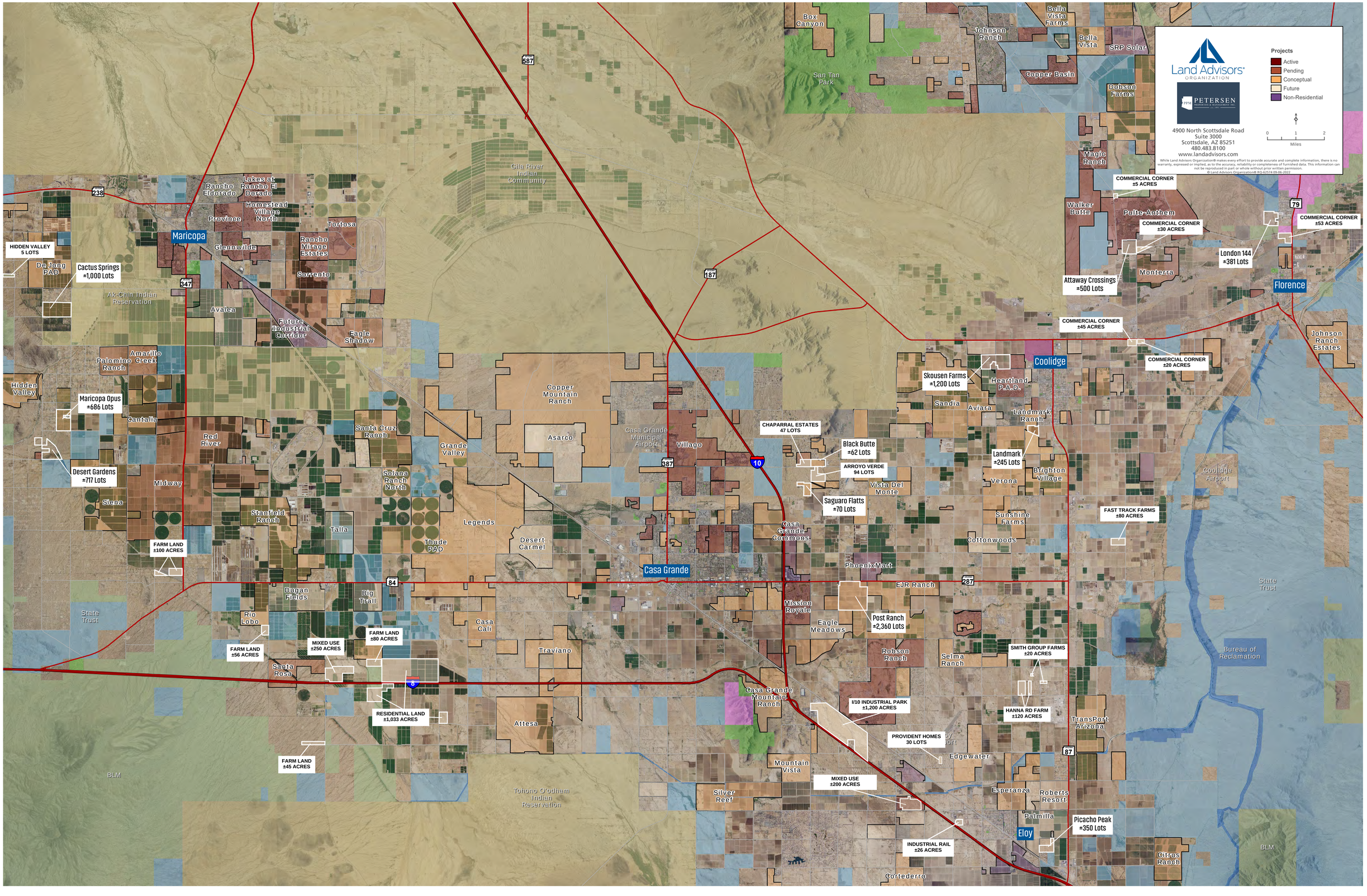
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Skousen Farms LF, LLC
10.21.24

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On behalf of Skousen Farms LF, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Skousen Farms LF, LLC

(o) 480.545.2208
(c) 602.540.8151
Kevin@PPMLand.com

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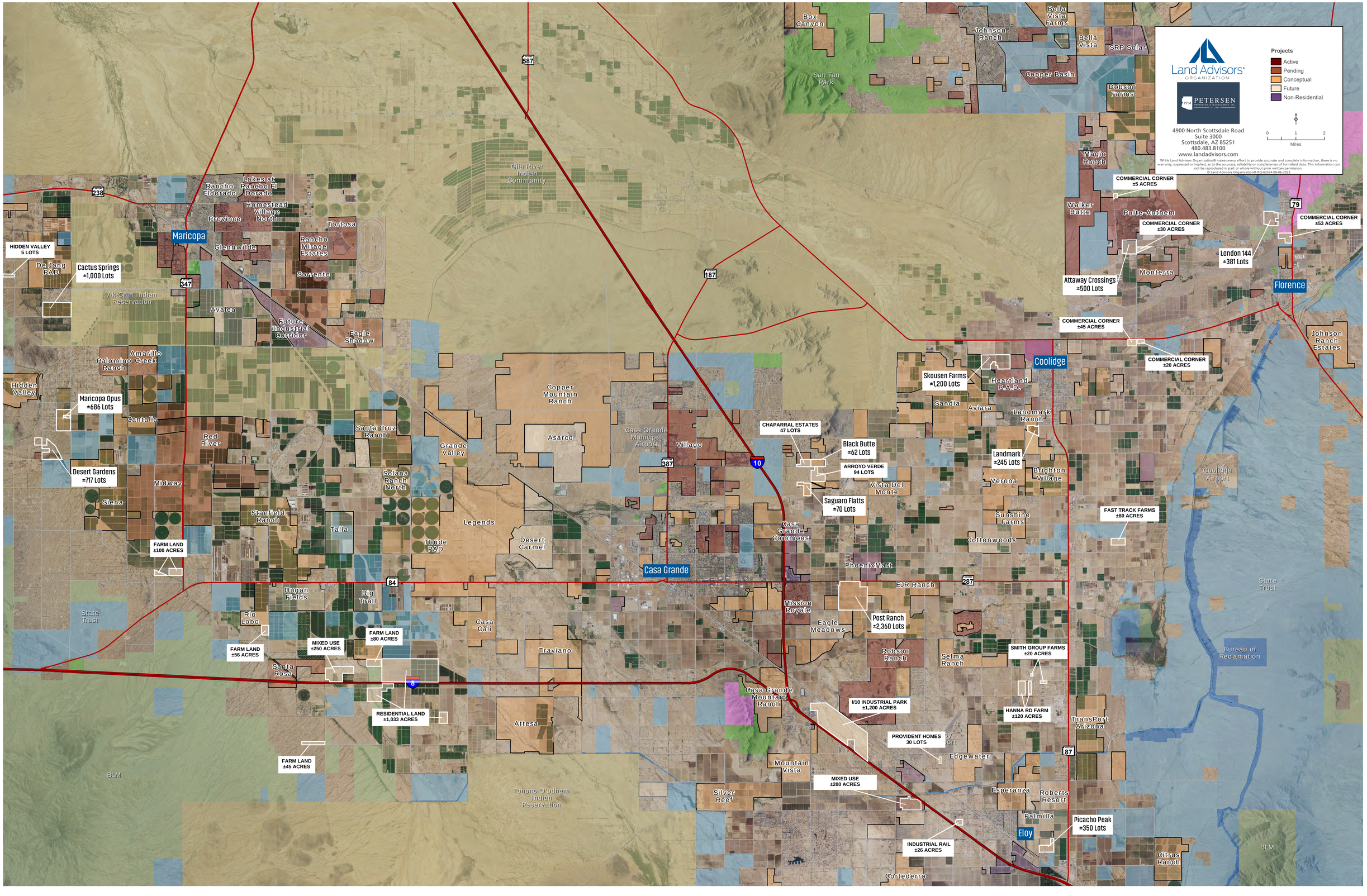
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Smith Group 20, LLC
10.21.24

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On behalf of Smith Group 20, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Smith Group 20, LLC

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(c) 602.540.8151
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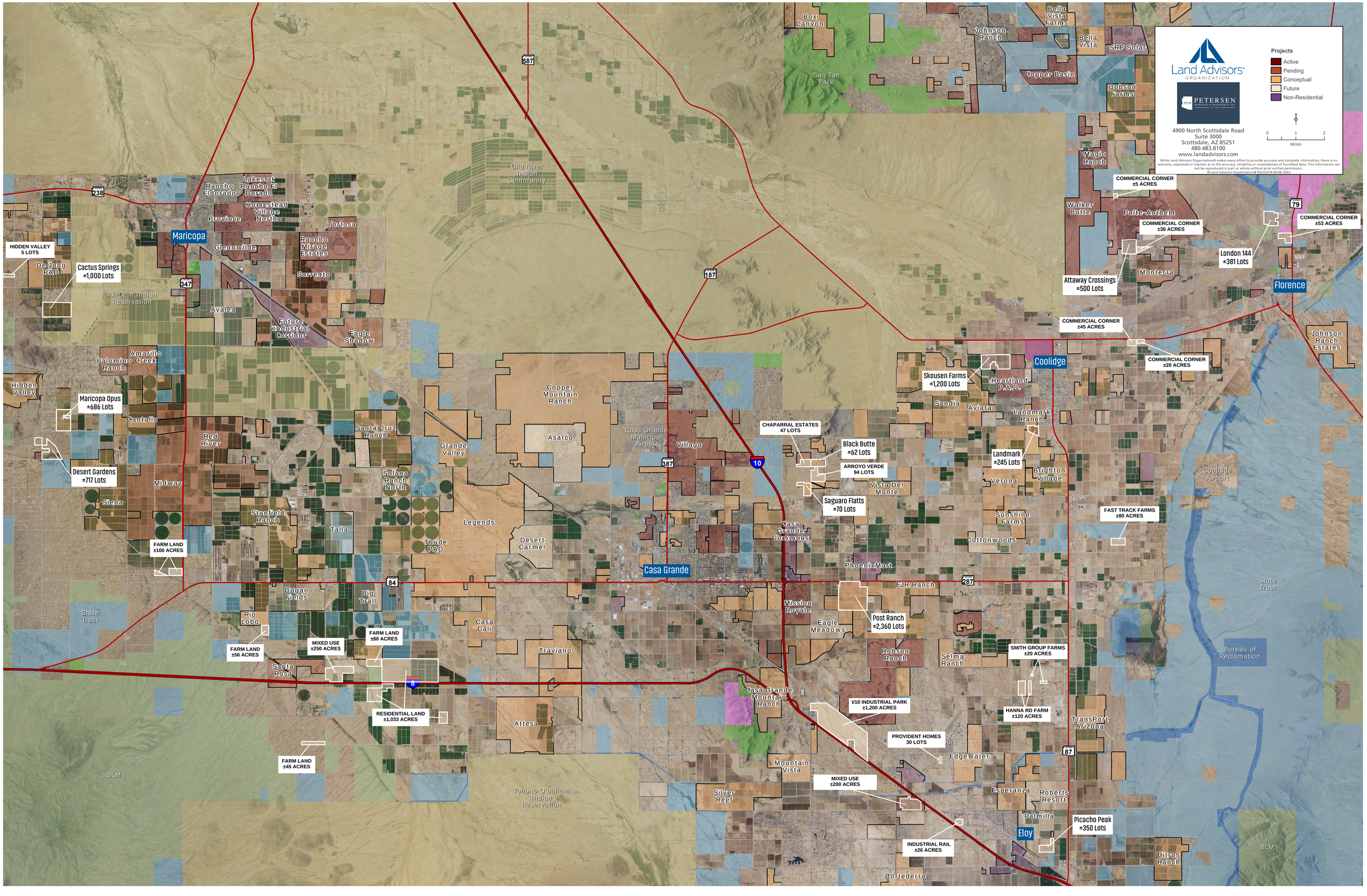
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Verona
Vista Del Monte
Sunshine Farms
Cottonwoods
PhoenixMart
EJR Ranch
Mission Royale
Eagle Meadows
Robson Ranch
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Edgewater
Esperanza
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Palmilla
Cortederro
Citrus Ranch
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October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair, Council Members, and Members of the Governor's Regulatory Review Council,

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Trey Smith
480.544.5588

PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Vickie L Hayes 56, LLC
10.21.24

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

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A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of Vickie L Hayes 56, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Vickie L Hayes 56, LLC

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(c) 602.540.8151
Kevin@PPMLand.com

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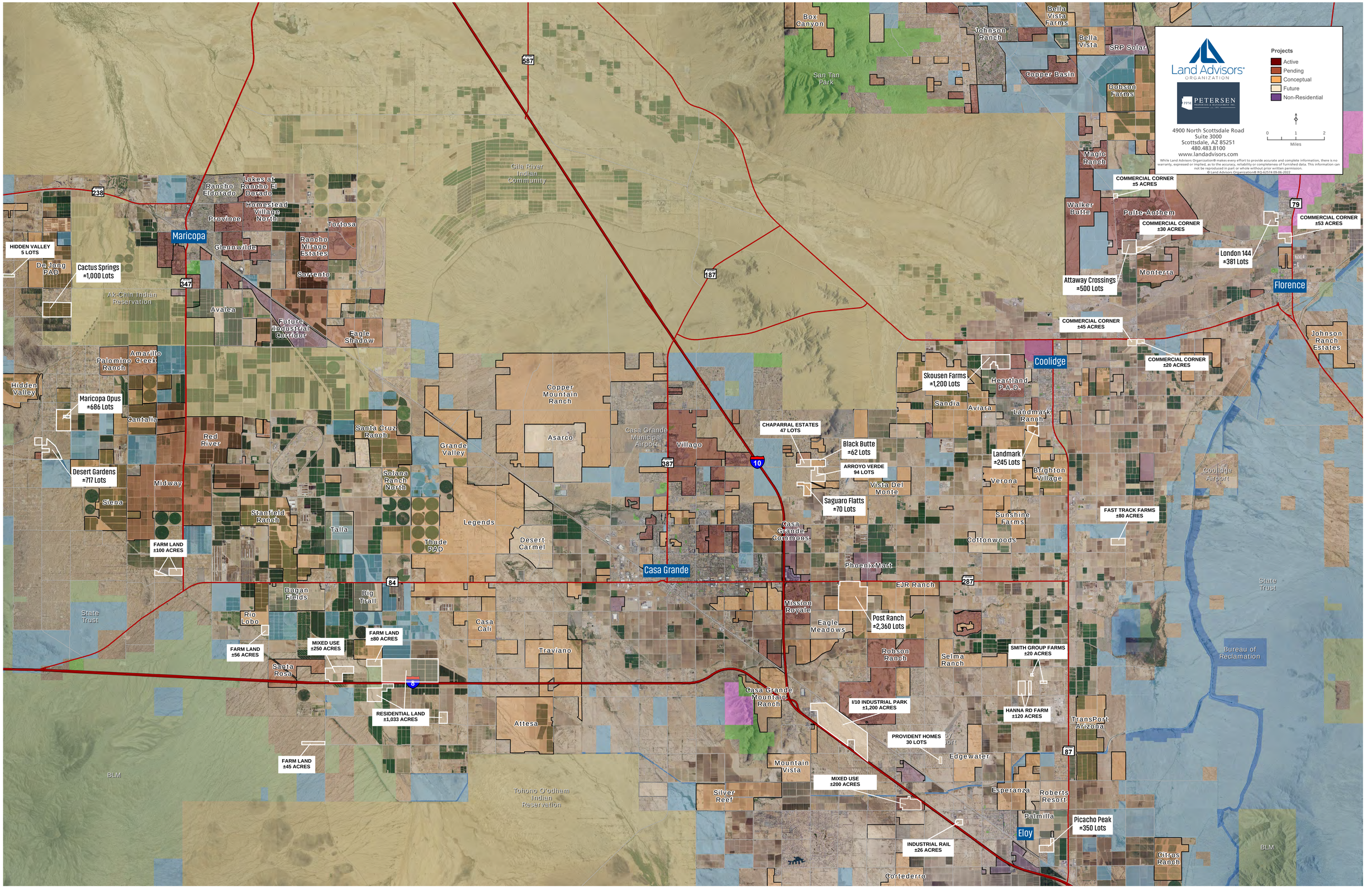
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Warren Rd 187, LLC
10.21.24

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I would like to express my gratitude to the Governor's Office and the Arizona Department of Water Resources (ADWR) for their diligent efforts in working with stakeholders to develop the new Assured Water Supply (AWS) rules, particularly the Alternative Designation of Assured Water Supply (ADAWS). As a Partner of Petersen Properties & Management Inc., which manages properties in Pinal County, and on behalf of Warren Rd 187, LLC, I believe these rules will foster a sustainable water supply that is crucial to our community's long-term growth and economic stability.

A sustainable water supply is fundamental not only to residents but also to the businesses and industries that rely on a vibrant and thriving economy in Pinal County. The implementation of ADAWS will ensure that our properties, both current and future, are supported by a reliable water portfolio, allowing for continued development while preserving the region's groundwater resources.

These rules also protect landowners who currently hold Certificates of Assured Water Supply (CAWS) by maintaining the value of these entitlements while facilitating a pathway for those without CAWS to pursue development more affordably and sustainably. The flexibility ADAWS provides in blending new non-groundwater sources into existing systems is a significant step forward in ensuring that future demands can be met without overburdening the region's groundwater supply.

On behalf of Warren Rd 187, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tanner Petersen
Manager, Warren Rd 187, LLC

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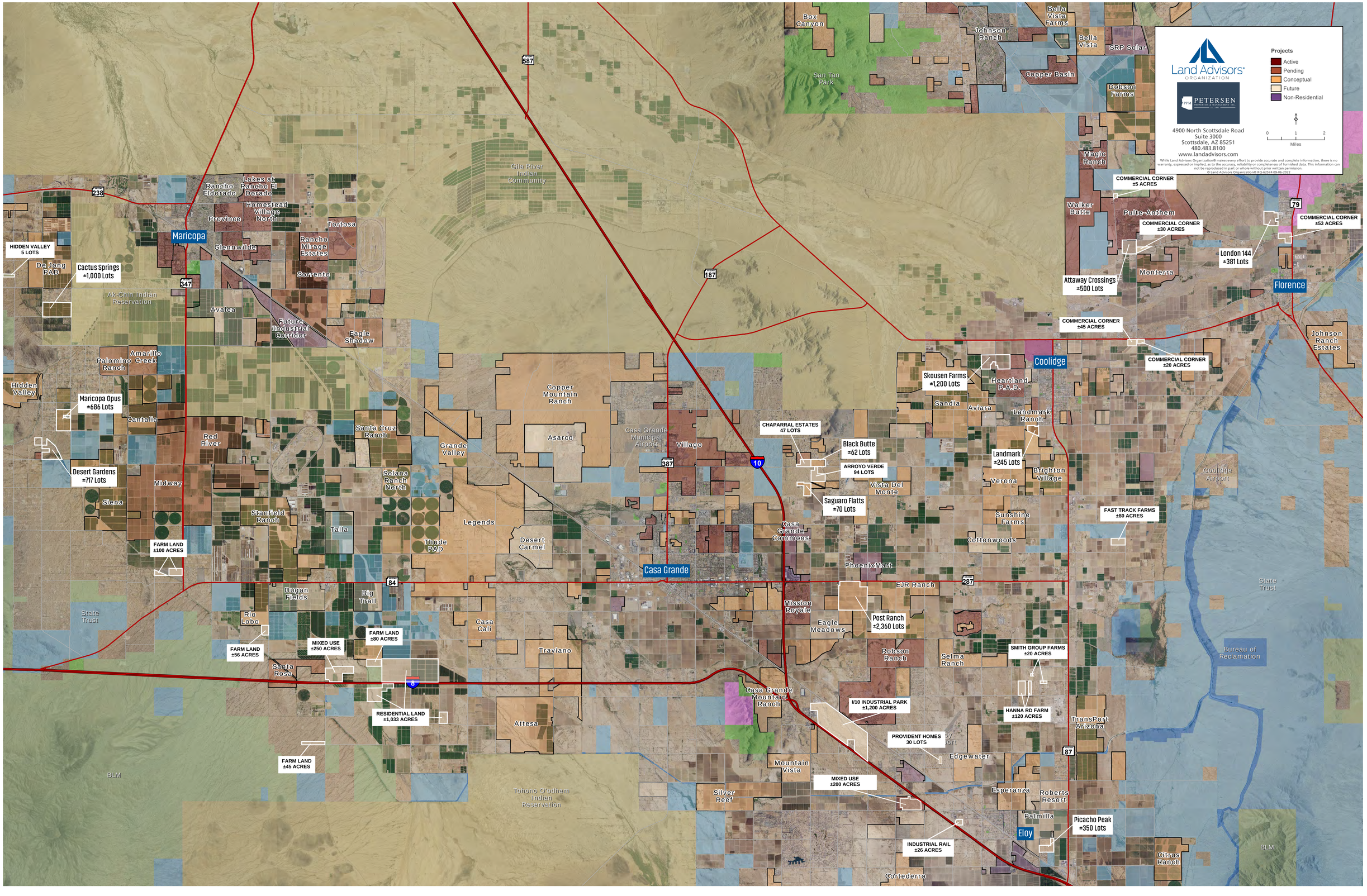
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RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)
Submitted to Governor's Regulatory Review Council on October 7, 2024

Dear Chair and Council Members:

I am writing this letter to urge the Council to pass the new assured water supply rules package. These rules provide an additional method for securing an assured water supply. There are several specific issues I wish to address head on. First, I want to address why the ADAWS is a new method for securing an assured water supply. Second, I will explain how the ADAWS provides for the use of groundwater. Third, I will address the issue of modeling relative to the Assured Water Supply Program. Fourth, I will address the groundwater offset requirements described as a tax by others. Finally, I will address the issue of the cost of securing an assured water supply.

Third Method for Securing Assured Water Supply: ADAWS

To date, only two methods have been available to secure an assured water supply. The first method, which is the default method, is through Certificates of Assured Water Supply where supplies are secured by developers and/or builders. The second method is through a Designation of Assured Water Supply, where water supplies are secured by the water provider for its entire water system instead of developers and/or builders securing an assured water supply for future individual subdivisions. As I will describe below under my second point, groundwater modeling performed by the Arizona Department of Water Resources (ADWR) projects that continued reliance on groundwater is not sustainable effectively making any new assured water supply determination dependent on groundwater impossible. The ADAWS, is a hybrid of these two methods, providing a third path for securing an assured water supply while continuing to rely on

some groundwater for a reasonable period of time. It is not perfect, just like the other methods are imperfect, but for some water providers, the ADAWS can be a beneficial solution for a community. While the ADAWS may not be a solution for every water provider, it should be made available as an option to water providers that can find a path forward under the requirements of the ADAWS.

Groundwater Provided Under ADAWS

One of the main reasons the ADAWS is a viable alternative for some water providers is that the ADAWS provides for the use of groundwater. Unlike the existing Designation method, the ADAWS provides for ongoing use of groundwater allowances and extinguishment credits associated with existing Certificates of Assured Water Supply. The existing Designation method only provides for the use of extinguishment credits. Without this specific concession, the ADAWS would not be a viable path forward just as the existing Designation method is not a viable path forward as it provides a groundwater allowance of zero.

Assured Water Supply Modeling

Since the release of groundwater models by the ADWR projecting unmet demands in the Pinal and Phoenix Active Management Areas (AMAs), new applications for assured water supply dependent on groundwater have not been viable. Several modeling efforts have demonstrated that these unmet demands associated with municipal and assured water supply demands can in fact be met. Although this is true, these modeling efforts do not resolve unmet demands associated with agricultural and industrial groundwater use. These modeling efforts also do not resolve depth-to-water limits prescribed in the assured water supply rules. Finally, even with all these modeling efforts, it is clear that continuing a system largely dependent on groundwater is not a satisfactory solution for sustaining communities indefinitely. Even if we all agreed to the continued reliance largely on groundwater for new growth, we would just hit the wall a little bit later. Moreover, delaying the development of a sustainable water supply will not make the cost of providing such a supply less expensive or make housing any more affordable. In fact, it will only make affordable housing even less attainable.

Groundwater Offset of Tax

The Homebuilders Association of Central Arizona has expressed concern that the burden of paying for groundwater offset should be placed on the those using the groundwater and not future homeowners. Arizona Water Company agrees with the HBACA. Arizona Water Company is developing a process that will ensure that the water supply acquired to offset existing groundwater demand will not be placed on the backs of the homebuilders. Moreover, Arizona Water Company is working with its communities to ensure the wastewater produced by new homes will be stored in the ground and recovered for delivery back to those new subdivisions further reducing the cost of the new water supply even for homebuilders. Finally, Arizona Water Company believes the rules already accommodate HBACA's concern about the groundwater offset having a life span. Our Vice-President of Water Resources, Terri Sue C. Rossi, has provided a letter specifically describing how Arizona Water Company strategy under the new ADAWS specifically resolves these concerns.

Cost of Securing an Assured Water Supply

While providing a 100-year assured water supply is not inexpensive, the other alternatives are much more expensive. The Certificate method has historically relied almost entirely on groundwater. This method relieved developers and builders from paying the costs of securing an assured water supply, but it did not relieve homeowners of that expense. The result of that method has been to put homeowners in the position of paying for a sustainable water supply on an annual basis through something called replenishment which is a function of the Central Arizona Groundwater Replenishment District. The CAGRD's rates for excess groundwater, used in 2023, were $875 per acre-foot in the Pinal Active Management Area and $856 per acre-foot in the Phoenix Active Management Area. By 2028, the CAGRD projects the price per acre-foot for replenishment will be $1,046 per acre-foot. Since 2018, this represents a nearly 5% increase in costs annually. The cost to secure even the most expensive water supply on the market today is roughly $50,000 per acre-foot for a 100-year supply which is $500 per acre-foot on an annual basis. If the water supply is acquired by the developer/builder, the cost of the supply will be incorporated into the purchase of the house or mortgage and the homeowner will not be burdened with costly annual replenishment costs.

In the Pinal AMA, the average residential single-family homeowner uses around a quarter of an acre-foot of water per year. Assuming the highest cost for a water supply today, $50,000 per acre-foot, that would equate to $12,500. Incorporated into a 30-year mortgage at 7.125% interest, that's less than $85 per month for 30 years. In Starbucks dollars, that's about 10 pumpkin spice lattes a month. If we continue using the replenishment model, at the end of 100 years, the people who buy that home will have paid around $650,000 for replenishment instead of $12,500 over a 30-year mortgage.

The question is not what the economic impact is of paying for an assured water supply. The real question is what the economic impact will be when we have exhausted all the vacant lots currently under an assured water supply determination and no new subdivisions can be built.

I appreciate all the efforts of the Governor's Office, ADWR staff and all the people and businesses who have docketed comments with ADWR and have submitted comments to the GRRC. I also appreciate the work the members of the GRRC are putting into considering these rules.

Very truly yours,

Fredrick K Schneider
President

tr

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)
Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

As the Vice-Chairman of the Pinal County Board of Supervisors, I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

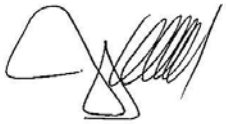
I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Respectfully,



Jeffrey McClure
Pinal County Board of Supervisors

October 21, 2024

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Sincerely,

DANIEL MENDOZA-LAMB
PRESIDENT
LEGION PROTECTION AGENCY
408 N. SACATON ST, SUITE I
CASA GRANDE, AZ 85122

ARIZONA WATER COMPANY

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RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)
Submitted to Governor's Regulatory Review Council on October 21, 2024

Dear Chair and Council Members:

Thank you for this opportunity to provide information to support your decision to approve, at the upcoming November 5th Council Meeting, rules being promulgated by the Arizona Department of Water Resources (ADWR) to create a new method for securing an Assured Water Supply called the Alternative Designation of Assured Water Supply or ADAWS. Arizona Water Company believes this is the best opportunity for it to secure an assured water supply for existing and future customers. We are preparing an application for a designation at this time and hope to be the first water provider to secure an assured water supply through the ADAWS.

There are currently two methods for securing an assured water supply: Certificate of Assured Water Supply (i.e. developer/builder dependent process to secure an assured water supply for individual subdivisions) and a Designation of Assured Water Supply (i.e. water provider dependent process to secure an assured water supply for all customers within a service area). Both methods meet the Assured Water Supply rules criteria, but a Certificate-based method is a piece meal method driven by decisions of individual landholders. The Designation-based method puts the water provider in the position of managing all water supplies available to

meet demands inside its service area. From that perspective, the designation provides a more cost-effective approach to providing water security to customers.

I have worked in water resources in Arizona since 1986. When I worked at ADWR, I personally worked on the Assured Water Supply rules promulgated in 1995 and on an earlier failed version of the rules in 1988. At the time, I don't think the water resources community really understood the significance of these rules and how they would become the center piece of the Arizona Groundwater Management Act of 1980, lauded as being one of the most progressive state laws of its kind.

Since 1995, there have been many changes to the Assured Water Supply Program, most of which focused around reducing the tolerance for using unreplenished groundwater. I don't recall any efforts to assist water providers dependent on the certificate-based method to shift to the designation-based system. Except under very specific circumstances, a Designation of Assured Water Supply is virtually impossible for a private water company, like Arizona Water Company, to secure…until now. I believe the rules before the Council are the most practical opportunity for Arizona Water Company, its customers and the community it serves, to secure a Designation of Assured Water Supply.

There are several reasons we believe these rules strike a good balance. First, because the rules are a hybrid of the two existing methods, ADWR has acknowledged the importance of groundwater allowances and extinguishment credits associated with existing certificates. As a result of this decision, water providers will be able to use groundwater, with reasonable sideboards, to transition from the certificates to a designation. Second, the new rules provide for changing how Arizona Water Company currently uses its CAP water to make this existing water supply eligible for offsetting existing groundwater pumping. Without these important concessions on the part of ADWR, Arizona Water Company would not be able to consider shifting to a Designation of Assured Water Supply.

Under the ADAWS, Arizona Water Company will employ a three-part strategy to implement the ADAWS. Arizona Water Company will use its current Central Arizona Project (CAP) water to offset existing unreplenished groundwater by recharging its CAP water in nearby groundwater savings facilities. In addition, Arizona Water Company will partner with local wastewater providers, particularly the Cities of Casa Grande and Coolidge to recharge wastewater, that will be produced by new subdivisions, in local recharge projects. These supplies along with sustainable supplies provided for new subdivisions by developers and homebuilders and also recharged in local aquifers, will then be pumped from wells benefited by this recharge and used to replenish groundwater and meet the water demands of new subdivisions. Through this method, Arizona Water Company will achieve the critical balance between replacing groundwater that has been historically unreplenished and providing sustainable water supplies for new development.

Pinal County, like other parts of Arizona, is experiencing a housing shortage. At the same time, we are experiencing an unprecedented industrial boom, the epicenter of which is Lucid motors. If these rules are not adopted, the Casa Grande and Coolidge area will run out of vacant

lots located in subdivisions with existing Certificates of Assured Water Supply. This will increase the price of homes in these areas and potentially quell what is expected to be a sustained economic pathway for these communities. Arizona Water Company plays an important role in making sure water is not a barrier to these communities and their future plans and ambitions.

Arizona Water Company implores the Council to approve these rules. The rules are not an "or", they are an "and". Please approve the adoption of these critical rules. Thank you in advance for your consideration.

Very truly yours,

Terri Sue C. Rossi

Vice President Water Resources

tr

October 21, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

Jenna Bentley, Council Member (at-large)

John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)

Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair, Council Members, and Members of the Governor's Regulatory Review Council,

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater

modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Gordon E Lewis

Stephen Q. Miller
Pinal County Board of Supervisors
Supervisor, District 3

PINAL COUNTY

October 21, 2024

Governor Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Having personally worked with Pinal County stakeholders to update the groundwater modeling supporting the Assured Water Supply Program, I have seen directly the issues we face in

Supervisor Stephen Q. Miller - District 3
820 E. Cottonwood Lane, Building A | Casa Grande, AZ 85122 | Office: 520-866-7401 | Cell: 520-858-4437
www.pinal.gov

providing water security in Arizona. I support the State's Assured Water Supply Program and the importance of its role in providing water security in Arizona. It has been an example for others to follow. But the existing methods are no longer viable for many communities, water providers, developers, builders and ultimately the homeowners they serve. The ADAWS creates a new method, that while not perfect, is a viable pathway for the two largest private water companies in the state of Arizona: EPCOR and Arizona Water Company. Of the over 1,200 groundwater-based subdivisions approved since the initial Assured Water Supply rules were adopted in 1995, nearly 50% are located inside these two water providers. The water demands of these two water providers likely exceed the water demand of all the other water providers combined. To create a method for these two water providers to become designated as having an assured water supply is truly an accomplishment. If adopted, these new rules will move the Assured Water Supply needle more than any other attempt since the initial adoption of the rules in 1995.

Also being a Board member of the Central Arizona Project, I have also seen first-hand the impact of current conditions on the Colorado River and record heat in the Colorado River Basin. As a result of my experiences, I believe Arizona's Assured Water Supply Program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is a critical step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to become designated as having an Assured Water Supply and allow land without existing determinations the opportunity to build desperately needed, affordable housing in particular in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities with a foundation of water security.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Stephen Q. Miller
Pinal County Board of Supervisors, District 3

Supervisor Stephen Q. Miller - District 3
820 E. Cottonwood Lane, Building A | Casa Grande, AZ 85122 | Office: 520-866-7401 | Cell: 520-858-4437
www.pinal.gov

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

DANIEL MENDOZA-LAMB
PRESIDENT
LEGION PROTECTION AGENCY
408 N SACATON ST, SUITE I
CASA GRANDE, AZ 85122

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

AREÁD is the developer of the Desert Whisper master planned community in the Tonopah area.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Bijan Afkhami

Bijan Afkhami
VP of Operations & Legal Affairs

October 15, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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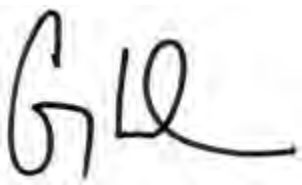
Sincerely,



Greg Lehmann
Executive Vice President
Communities Southwest

October 15, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Luka Vignjevic

Chief Financial Officer

Communities Southwest

Leo Lew
County Manager

PINAL COUNTY
WIDE OPEN OPPORTUNITY

Himanshu Patel
Deputy County Manager

Mary Ellen Sheppard
Deputy County Manager

Cathryn Whalen
Deputy County Manager

October 16, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair and Council Members:

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We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Leo Lew
Pinal County Manager

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:
RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)
Submitted to Governor's Regulatory Review Council on October 7th, 2024
Dear Members of the Governor's Regulatory Review Council,
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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Brent Grizzle, CEO

5100 California Avenue, Suite 233. CA 93309 | (661) 843-7886 | (866) 645-2218

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

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Sincerely,

Ty LeSueur

LeSueur Investments

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
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Submitted to Governor's Regulatory Review Council on October 7th, 2024

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Judy Purze

October 15th, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

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affordable with each day we wait to invest in sustainable water supplies. I am of the opinion that the new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities and I look forward to your support in approving these crucial new rules.

Sincerely,

Michael Markakis
Vice President
Communities Southwest LDC, LLC

CITY OF CASA GRANDE PUBLIC WORKS | STRONGER UNITED
3181 N Lear Ave., Casa Grande, Arizona 85122
(520) 421-8625 | www.CasaGrandeAZ.gov

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
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John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

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I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024. With all the industrial development that we have and are achieving in the Casa Grande area, along with the shear number of jobs that are being created, housing development for those employees is essential to our continued success. The single biggest issue is water.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure
that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Kevin Louis, Public Works Director

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

The Arizona Municipal Water Users Association (AMWUA) supports the proposed Alternative Designation of Assured Water Supply (ADAWS) rules as submitted by the Arizona Department of Water Resources (ADWR) on October 7, 2024. These rules are projected to reduce groundwater pumping in the Phoenix and Pinal Active Management Areas (AMAs) while allowing residential and industrial growth to occur, which would be beneficial for long-term water management and the economy.

For over 40 years in Arizona's most urban areas, the Assured Water Supply Program has prohibited the sale of subdivision lots that lack a 100-year assured water supply. ADWR administers this program by issuing Certificates of Assured Water Supply (Certificates) to individual subdivisions[1] and Designations of Assured Water Supply (Designations) to municipal water providers that demonstrate an assured water supply for all uses of water they serve. All ten of AMWUA's member municipalities – Avondale, Chandler, Gilbert, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, and Tempe – which together serve over half of Arizona's population, have Designations making AMWUA uniquely qualified to propound on the benefits of the ADAWS rule.

Arizona's economic success and our way of life are a direct result of the billions of dollars the ten AMWUA cities and other municipal water providers have invested in water resources and infrastructure to obtain and maintain their Designations. These Designations enable businesses and industries that are crucial to our economy to locate and thrive here and provide consumer protection for the majority of the state's population so they can call central Arizona their home. Our state has benefited from the basic tenant of the Assured Water Supply Program - water first, then development - a tenant embodied in a Designation of Assured Water Supply.

Groundwater management benefits our economy

Central Arizona has struggled for nearly a century to keep groundwater pumping in balance with what its groundwater supplies can reasonably support. Historically, groundwater was readily available for farmers, miners, developers and water providers; the only barriers to its use were the costs of drilling, operating, and maintaining wells deep enough to pull water from underground. Overdrafting—pumping more groundwater than is replenished—has been a known problem since

[1] "Subdivision" is land that has been divided into six or more lots or parcels for sale or lease. A.R.S. § 32-2101.

the 1930s. Arizona's 1980 Groundwater Management Act put us on a trajectory to achieve long-term stability between use and supply by regulating groundwater pumping in the most populous and economically productive parts of the state known as AMAs.

The Assured Water Supply Program put parameters on some growth and development within AMAs. Water providers could obtain a Designation if they could prove they had sufficient water supplies on hand for current and projected demands within their service areas for the next 100 years. Developers could build subdivisions outside of a Designated provider's service area if they could obtain a Certificate, which similarly required proof of a 100-year water supply.

Consistent with the purpose of the Groundwater Management Act, ADWR proposed Assured Water Supply rules in 1988 to restrict the decline of groundwater levels in undeveloped areas of the AMAs. The Arizona Legislature responded to these draft rules in 1993 by passing legislation allowing groundwater to be used to demonstrate an assured water supply if ADWR determined the groundwater was "physically available" and its use was later replenished by the Central Arizona Groundwater Replenishment District (CAGRD). Over the next three decades, ADWR issued Certificates for subdivisions on the periphery of the Phoenix metropolitan area and in Pinal County based on groundwater because ADWR's older models showed that enough groundwater was physically available for those proposed developments and current users. However, ADWR's Pinal AMA model (2019) and Phoenix AMA model (2023) now project there is not enough groundwater to meet all demands in these areas for 100 years. Consequently, ADWR may no longer issue Assured Water Supply determinations in these AMAs based primarily on groundwater.

The ADAWS rules provide an innovative way to allow development to move forward in the Phoenix and Pinal AMAs consistent with the principles of the Assured Water Supply Program. By providing a framework for currently undesignated water providers to obtain a Designation, the ADAWS rules will allow subdivisions, industries and other development to continue while ensuring sufficient water supplies are available to meet the long-term needs of all users supplied by these water providers. No other alternative has been offered or developed that could match a Designation's all-encompassing approach to water security.

The Phoenix AMA groundwater model's projection of shortages was expected

Contrary to the opinions of some, the projections of unmet demand in ADWR's Phoenix AMA groundwater model had been anticipated for several years. Following the 2019 release of the Pinal AMA groundwater model and the subsequent discussions about the pause of subdivision development due to the model's projection of unmet demand, ADWR emphasized that the Phoenix AMA would face a similar situation.[2]

[2] Tory, Sarah (2021, June 1). Rapid growth in Arizona's suburbs bets against an uncertain water supply. *High Country News.* *https://www.hcn.org/issues/53-6/south-water-rapid-growth-in-arizonas-suburbs-bets-against-an-uncertain-water-supply/.* Ayesha Vohra and Jeff Inwood, Arizona Department of Water Resources. (2021, June 22). "Assured Water Supply Program: Background and Pinal 'Case Study.'" Post-2025 AMAs Committee, June 22, 2021, Slide 45.

Moreover, before the Phoenix AMA model was released, the Bureau of Reclamation published a model of the West Salt River Valley Basin, which is part of the Phoenix AMA. This model, which was developed by the Bureau of Reclamation in consultation with a variety of stakeholders over several years and used a different set of assumptions than the Phoenix AMA groundwater model, projected considerable declines in groundwater levels by 2060 and that this area will need anywhere between 47,000 acre-feet to 260,000 acre-feet of renewable water supplies each year to make up for this unmet demand.

The findings of ADWR's state-of-the-art groundwater models must be assumed for purposes of the ADAWS rules proceedings because they confirm the fundamental reality—groundwater supplies are finite, and we cannot continue to rely on them as if they are not.

The 25% reduction to a provider's groundwater supplies is necessary for ADAWS to work

Under the proposed ADAWS rules, ADWR will determine a volume of groundwater that is physically available to an ADAWS applicant over 100 years. For the New Alternative Water Supply included in a municipal provider's initial application and for each subsequent New Alternative Water Supply the provider acquires, ADWR will reduce the volume of groundwater physically available to the municipal provider by 25% of the volume of the new supply over 100 years. We strongly support this 25% reduction. Consider the following:

- This offset does not, as some have alleged, require an applicant to "relinquish" any part of its New Alternative Water Supply. Nor is it a "tax" or "fee" on any New Alternative Water Supply. In fact, the offset effectively encourages the water provider to use New Alternative Water Supplies in place of groundwater.

- Under the ADAWS rules, a generous volume of groundwater will be "physically available" to the water provider to enable it to grow incrementally on New Alternative Water Supplies. However, in order to ensure that future growth is not reliant on mined groundwater and to protect the integrity of the Assured Water Supply Program, it is vital that new water supplies are secured and utilized in part to offset groundwater pumping.

- The onus of this 25% reduction is on the water provider. It is misleading to suggest that it is on any developer. The water provider and its community leaders would decide how best to finance the acquisition of New Alternative Water Supplies through rates it charges to all customers or through impact fees charged for new developments.

- The initial ADAWS draft rules proposed requiring a 30% reduction in groundwater pumping. However, based on feedback from stakeholders and additional calculations, ADWR concluded ADAWS could work with the lower value of 25%. ADWR has stressed, however,

https://www.azwater.gov/sites/default/files/adwr_meetings_docs/Post2025Presentation_FinalComplied_06222021.pdf.

that this value cannot be decreased further if ADAWS is to work as intended to reduce groundwater pumping.

- It is nonsensical to suggest that the 25% should be reduced to 4% or some lesser value because it would be the least burdensome alternative. This suggestion ignores the reality of the limitations of our aquifers and the fact that there would be less groundwater available for new homes and businesses absent this 25% reduction. State law empowers and requires ADWR to manage the Assured Water Supply Program and to develop hydrologic models to evaluate the state of our groundwater supplies. ADWR's Phoenix AMA groundwater model and the Pinal AMA groundwater model project a declining trajectory of groundwater levels in each AMA that must be addressed.

- Consumer protection for homeowners is not a burden but the foundation of our economy. The State's 100-year Assured Water Supply Program provides the water security we need to thrive. If the program is weakened or allowed to unravel, it will send a detrimental message to our residents and businesses as well as to potential future investors that would undermine and threaten Arizona's economic security.

Decreasing the 25% reduction would put at serious risk the investments the AMWUA cities and other Designated water providers have made in their water systems to provide water security for their residents. These investments are all the more critical given the uncertainty surrounding how the Colorado River's waters will be managed in the future. Due to prolonged drought and a hotter and drier climate, the federal government is in the process of developing new operating guidelines for managing the river's waters. These guidelines must be implemented by the end of 2026. Based on the proposals that have been discussed so far, water providers that receive Colorado River water through the Central Arizona Project (CAP) are facing a future in which this water will be reduced—potentially significantly. The severity of these cuts may vary with each year, including the real possibility of no water in the CAP canal.

The AMWUA cities will need to offset reductions to their Colorado River water, which could include utilizing stored water. This process involves pumping (or "recovering") water that they have stored underground for several decades as an insurance or emergency backup for times of shortage. One factor that will jeopardize their recovery efforts is if the groundwater level near some recovery wells drops by more than four feet annually. When that occurs, per state requirements, recovery at that well must be halted. Groundwater does not recognize the boundaries of water providers; drawdowns caused by one provider's pumping can threaten another provider's recovery efforts.

The 25% groundwater offset in ADAWS protects an already stressed aquifer and helps our members recover stored water, ensuring that they can continue delivering water to over half the state's population and the countless businesses that power the Phoenix-metropolitan area's economy.

Any comments related to ADWR's economic analysis must consider how unsustainable groundwater pumping will harm Arizona's long-term economic prospects

When reviewing comments submitted related to the Economic, Small Business, and Consumer Impact Statement, we urge you to keep two facts front and center:

- First, water is fundamental to Arizona's communities and economy. Without the guarantee that water will be readily available for current and future generations, Arizona will have no future.

- Second, although the Groundwater Management Act and Assured Water Supply Program have improved our management of groundwater, we are still pumping more than what is replenished. Any comments regarding the financial burden of becoming Designated under ADAWS or the harm caused by halting new groundwater-dependent growth due to the Pinal and Phoenix AMA groundwater models must be evaluated against the impact that further groundwater declines will have on Arizona's long-term economic prospects. Failing to do that would be tantamount to missing the forest for the trees.

In Conclusion

Ensuring long-term water security is how we make certain that Arizona will thrive, protect the health and safety of its citizens, and have a resilient economy. ADWR, the state agency tasked with protecting our groundwater supplies, has determined that we have reached the limitations of growth on groundwater in the Phoenix AMA and Pinal AMAs. The ADAWS rules must be a solid regulatory tool to ensure the long-term sustainability of our aquifers and, in turn, our water security. Otherwise, they put the needs of existing residents at risk and jeopardize the long-term viability of our economy.

We believe the ADAWS rules provide a rigorous but achievable path for undesignated providers to obtain a Designation through dedicated commitment and investment. We acknowledge that the success of the ADAWS program depends in part on how many undesignated providers will rise to the challenge and pursue an ADAWS. But AMWUA's members also know that Designations provide invaluable benefits to our desert communities. We believe future Designations will help ensure that Arizona remains thriving and prosperous for current and future generations.

Respectfully,

Warren Tenney
Executive Director

Integrated Real Estate Services
a diversified real estate investment company

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)
Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair and Council Members:

Dear Chair, Council Member and Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water

2120 E 6th Street, Suite 16 ▪ Tempe, Arizona 85288
Phone: 480/804-1076 ▪ Facsimile: 480/804-1703

providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

If you have any questions, please feel free to call or email me. I can be reached at 480-804-1076 x 102 or at gabe@eires.com.

Sincerely,
SAIA ENTERPRISES, INC.
d/b/a Integrated Real Estate Services

Gabriel G. Saia, Jr.

Gabriel G. Saia, Jr., CPA
President

October 18, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair and Council Members,

On behalf of Lucid Motors, we appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

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Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a

groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Michael Cruz, MBA
Sr. Manager, State Public Policy
Lucid Motors
michaelcruz@lucidmotors.com
(602) 599-3206

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Mike Earlywine

October 16, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) submitted to Governor's Regulatory Review Council

Dear Members of the Governor's Regulatory Review Council,

I am writing to express my support for the Alternative Designation of Assured Water Supply (ADAWS) and Commingling rules package submitted by the Arizona Department of Water Resources (ADWR) on October 7th, 2024.

The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued in Pinal County since 2019. These new rules provide a sound method for water providers to secure a new assured water supply determination and allows developers a reasonable and responsible path forward to build urgently needed affordable housing in Pinal County. I fully support and encourage the adoption of these new rules as it represents a significant advancement for the economic vitality of Pinal County.

I appreciate the opportunity to comment and the Council's ongoing commitment to working cooperatively to improve Arizona's assured water supply program.

Sincerely,

Michelle Yerger
Villago CSW, LLC
Vice President - Communities Southwest Inc.

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
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Rana Lashgari, Council Member (at-large)

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ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Gabi Baer

602-549-3521

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

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Sincerely,

Hal Baer

602=-524-0833

SCOTTSDALE WATER

9379 E San Salvador Drive
Scottsdale, AZ 85258

Phone: 480-312-5685
ScottsdaleAZ.gov/Water

October 21, 2024
Governor's Regulatory Review Council
100 North Fifteenth Avenue, Suite 302
Phoenix, AZ 85007

VIA EMAIL grrccomments@azdoa.gov

Re: Alternative Pathway to Designation of 100-Year Assured Water Supply (ADAWS)

To Whom it May Concern,

Scottsdale Water appreciates the council collecting input and comments from community members and water providers as this rule effects Arizona as a collective on how we adapt to the future water environment and how we grow as a state. The Assured Water Supply Program is a cornerstone to aquifer protection and strong long-range planning in our desert communities. It is our hope and objective that our comment will provide consideration to the new proposed ADAWS rules to ensure that there is continued protection to sustainable water management while prioritizing healthy aquifers.

Scottsdale Water has already invested hundreds of millions of dollars to safeguard our water supply and infrastructure. Included in Scottsdale's plans are future investments to counteract the continued drought and the consequences of shortage, which strains our surface water supplies and plays a role in the costly infrastructure required for resiliency. Provider designations enable businesses and industries that are crucial to our economy to locate and thrive here. Our state has benefited from the basic tenant of the Assured Water Supply Program - water first, then development - a tenant embodied in a Designation of Assured Water Supply.

The 25% reduction in pumping is the basis of striking a balance between the immediate needs of water providers who currently rely on groundwater and the long-term need to reduce groundwater mining over time. The "25% rule" ensures that providers acquire new non-groundwater supplies, 25% of those supplies will be used to reduce groundwater pumping in the future. This 25% rule is the primary mechanism to ensure this program continues to meet the objectives of the Assured Water Supply Program.

We urge the council to keep this line as decreasing the 25% would put at serious risk the investments cities and other Designated water providers have made in their water systems to provide water security for a large portion of existing Arizona residents. As

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Scottsdale, AZ 85258

Phone: 480-312-5685
ScottsdaleAZ.gov/Water

the future unfolds and further and drastic reductions on the Colorado River are seen by Arizona water providers, there is little doubt that groundwater pumping will dramatically increase. Balancing this with economic growth and this alternative pathway, Scottsdale believes that the 25% line is a reasonable path forward to all these factors.

Scottsdale Water respectfully asks the GRRC to consider this in the process and when adopting the rule.

Sincerely,

_____

Gretchen A. Baumgardner
Water Policy Manager | City of Scottsdale

SIHI

2555 E Camelback Road
Suite 610
Phoenix, AZ 85016
sihiproperties.com

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
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SIHI

2555 E Camelback Road
Suite 610
Phoenix, AZ 85016
sihiproperties.com

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Brooks Griffith
Vice President

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:32 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Scott West <swest2507@gmail.com>
Date: Friday, October 18, 2024 at 9:25:48 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club Team <info@podiumclub.com>

October 18, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

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RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

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I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Scott West
480-549-1533

Sent from my iPad

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:33 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Jon Via <jon@jonvia.com>
Date: Saturday, October 19, 2024 at 9:53:04 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 21, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

Jenna Bentley, Council Member (at-large)

John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

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Sincerely,
Jon Via

--
Jon V.

#: (480) 242-1165
@: jon@jonvia.com

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:36 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Beth <beepeople7@gmail.com>
Date: Saturday, October 19, 2024 at 7:38:25 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

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Sincerely, Bethany B.

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:34 PM
To: Simon Larscheidt <splarscheidt@gmail.com>

---------- Forwarded message ---------
From: Jim Edmonds <JEdmonds@microsi.com>
Date: Saturday, October 19, 2024 at 10:07:38 AM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>, Jens Plougmann <jcplougmann@gmail.com>

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

Jenna Bentley, Council Member (at-large)

John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

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Sincerely,

Jim Edmonds

2555 E Taxidea Way

Phoenix, AZ 85048 602-476-3731

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:21 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Tripp Schwab <tripp@nikaenergy.com>
Date: Sunday, October 20, 2024 at 1:32:36 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 20, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

Jenna Bentley, Council Member (at-large)

John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

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Sincerely,

William (Tripp) Schwab

4665 N. TUMBLEWEED RD.

LOT 23
ELOY AZ 85131

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:39 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Annette Richmond <annette.richmond@icloud.com>
Date: Monday, October 21, 2024 at 8:19:49 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 21, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Jessica Klein, Chair

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Sincerely,
Annette Richmond

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

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Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:40 PM
To: Simon Larscheidt <splarscheidt@gmail.com>

---------- Forwarded message ---------
From: Shannon Erickson <shannonandamy@msn.com>
Date: Monday, October 21, 2024 at 8:46:48 AM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
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Sincerely,

Shannon Erickson
12014 S Warpaint Drive
Phoenix, Arizona 85044

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:40 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Phil Veitch <phil@veitchcreative.com>
Date: Monday, October 21, 2024 at 8:22:47 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

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Sincerely,

Phil Veitch

VEITCH CREATIVE
PHOTOGRAPHY & DESIGN

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:37 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Kevin Kirkwood <kevin.kirkwood@krkrealty.com>
Date: Sunday, October 20, 2024 at 4:56:37 AM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

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Sincerely,

--

Kevin Kirkwood
KRK Realty
227 S Smith Rd, Suite 103
Tempe, AZ 85281

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:42 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: MB Media Brokers <dlevine@mbmediabrokers.com>
Date: Monday, October 21, 2024 at 8:57:03 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club <info@podiumclub.com>

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Sincerely,
David Levine
Podium Club Member
Sent from my iPhone

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:38 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Erik Lilliebjerg <ELilliebjerg@nvidia.com>
Date: Monday, October 21, 2024 at 12:06:54 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Erik Lilliebjerg <elilliebjerg@nvidia.com>, info@podiumclub.com <info@podiumclub.com>

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

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Jay Spector, Council Member

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John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair, Council Members, and Members of the Governor's Regulatory Review Council,

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the

adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Erik Lilliebjerg

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:42 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: ravi tomerlin <hondaguyaz@gmail.com>
Date: Monday, October 21, 2024 at 9:09:59 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>, Podium Club <info@podiumclub.com>

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,
Ravi Tomerlin

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and, commingling rules (file number R24– 156) Submitted to Governor's regulatory review and counsel on October 7, 2024.

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:23 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: davidrpeck12@gmail.com <davidrpeck12@gmail.com>
Date: Monday, October 21, 2024 at 8:49:39 AM UTC-7
Subject: Comments pertaining to ADAWS and, commingling rules (file number R24– 156) Submitted to Governor's regulatory review and counsel on October 7, 2024.
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club Team <info@podiumclub.com>

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Sincerely, David Peck

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:35 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Brian <brian@kafenbaum.com>
Date: Saturday, October 19, 2024 at 1:48:11 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Attesa Newsletter <info@podiumclub.com>

October 21, 2024
Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, ChairFrank Thorwald, Council Member Jay Spector, Council MemberJeff Wilmer, Council MemberJenna Bentley, Council Member (at-large)John Sundt, Council MemberRana Lashgari, Council Member (at-large)

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Brian Kafenbaum

Brian Kafenbaum
brian@kafenbaum.com
(623) 225-8034

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:38 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Cable <cable@cableandsara.com>
Date: Sunday, October 20, 2024 at 1:34:49 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club <info@podiumclub.com>, Sara Rosenberg <Sara@cableandsara.com>

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

Jenna Bentley, Council Member (at-large)

John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

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Sincerely,
Cable and Sara Rosenberg

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

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1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:38 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Brian M <dosmac123@gmail.com>
Date: Sunday, October 20, 2024 at 6:07:19 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: William Tybur <info@podiumclub.com>

October 21, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

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Sincerely,
Brian McLemore

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

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1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:39 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Erickson, Dan <derickson@drefinancial.com>
Date: Monday, October 21, 2024 at 8:11:08 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
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Sincerely,

Daniel Erickson

The information transmitted is intended only for the person or entity to which it is addressed and may contain proprietary, business-confidential and/or privileged material. If you are not the intended recipient of this message you are hereby notified that any use, review, re-transmission, dissemination, publication, distribution, reproduction or any action taken in reliance upon this message is prohibited. If you received this in error, please contact the sender and delete the material. Any views expressed in this message are those of the individual sender and may not necessarily reflect the views of the company.

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:33 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Joseph Calderon <joevant@me.com>
Date: Saturday, October 19, 2024 at 5:20:18 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club <info@podiumclub.com>

October 19, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

Jenna Bentley, Council Member (at-large)

John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

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Sincerely,
Joseph Calderon
480-321-5094

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

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1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:30 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Tony Szirka <tonyszirka@gmail.com>
Date: Friday, October 18, 2024 at 7:34:06 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>, info@podiumclub.com <info@podiumclub.com>

October 21, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

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Tony Szirka

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

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1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:39 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Tom Marek <ctmarek3@gmail.com>
Date: Monday, October 21, 2024 at 8:06:04 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 21, 2024
Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

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Frank Thorwald, Council Member
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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Tom Marek
Oro Valley, AZ

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:31 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: H Hill <henry.hill.ece@gmail.com>
Date: Friday, October 18, 2024 at 8:49:55 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club <info@podiumclub.com>

October 18, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair, Council Members, and Members of the Governor's Regulatory Review Council,

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured

water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Henry Hill

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: ADAWS Support Letter

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 10:10 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: pking@pinalalliance.org <pking@pinalalliance.org>
Date: Monday, October 21, 2024 at 11:33:27 AM UTC-7
Subject: ADAWS Support Letter
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: rina@pinalpartnership.com <rina@pinalpartnership.com>

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

A black text on a white background Description automatically generated

Patti King
Executive Manager

Pinal Alliance for Economic Growth

17235 N. 75th Avenue, Suite D-145

Glendale, Arizona 85308

520-836-6868 | Mobile: 602-790-0310

www.pinalalliance.org

6 attachments

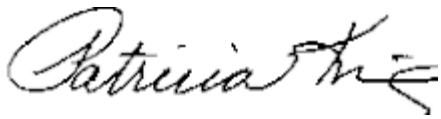

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image006.jpg
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Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments on ADAWS & Comingling Rules (file#R24-156) Submitted to Governor's Regulatory Review Council on Oct. 7

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:21 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Andrea Wellington <ajw661@gmail.com>
Date: Saturday, October 19, 2024 at 8:04:26 PM UTC-7
Subject: RE:Comments on ADAWS & Comingling Rules (file#R24-156) Submitted to Governor's Regulatory Review Council on Oct. 7
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>, info@podiumclub.com <info@podiumclub.com>

October 19, 2024

Governor's Regulatory Review Council

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)

Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair, Council Members, and Members of the Governor's Regulatory Review Council,

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without

existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules. As a member of Podium Club at Attessa and a frequent visitor to Casa Grande, this approval will have a positive impact on my life.

Sincerely,

Andrea Wellington

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (File Number R24-156)

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:19 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Dennis Tucker <dennistucker@cox.net>
Date: Saturday, October 19, 2024 at 7:55:26 AM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (File Number R24-156)
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club <info@podiumclub.com>, Julie <julie_hamilton@cox.net>

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

Jenna Bentley, Council Member (at-large)

John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair, Council Members, and Members of the Governor's Regulatory Review Council,

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024. As you know, these proposed rules reflect the practical policy recommendation made by the Governor's Water Policy Council on November 29, 2023.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new

rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County in particular.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Dennis L. Tucker, P.E.

AZ# 24439

Gilbert, AZ

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:20 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: cvanblarcum <cvanblarcum@gmail.com>
Date: Saturday, October 19, 2024 at 1:11:33 PM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

October 19, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair, Council Members, and Members of the Governor's Regulatory Review Council,

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply

determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Clyde VanBlarcum

Sent from my Galaxy

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Letter of support for ADAWS and Commingling Rules

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 10:09 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Kathleen J Singh <newfie222@me.com>
Date: Monday, October 21, 2024 at 11:23:02 AM UTC-7
Subject: Re: Letter of support for ADAWS and Commingling Rules
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: rina@pinalpartership.com <rina@pinalpartership.com>

> On Oct 21, 2024, at 11:07 AM, Kathleen J Singh <newfie222@me.com> wrote:
>
> Members of the GRCC,
>
> I appreciate the Couuncil's commitment to balance the needs of Arizona"s citizens and stakeholders, while ensuring effective regulations. Your role in reviewing the Alternative Designation of Assurd Water Supply rules developed by the Arizona Department of Water Resources, is vital in promoting sustainable water management and economic growth in our state.
>
> I am writing to express my full support for the ADAWS and the Commingling rules package submitted by ADWR on October 7th, 2024.
>
> These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.
>
> Arizona's Assured Water Supply program is more important than ever. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water supply providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build the affordable housing Pinal County needs.
>
> Than you for your attention to this important matter, and I look forward to your support of these new rules.
>
> Sincerely,
> KATHLEEN SINGH
>
>

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Water Supply

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:18 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Stan Farrell <drfarrell@headpaininstitute.com>
Date: Friday, October 18, 2024 at 6:48:01 PM UTC-7
Subject: Water Supply
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair, Council Members, and Members of the Governor's Regulatory Review Council,

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing

becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Dr. Stan Farrell, FAAOP
Diplomate, American Board of Orofacial Pain
HPI Head Pain Institute/AZTMJ PLLC
9481 E. Ironwood Square Drive
Scottsdale, AZ 85258
480 945 3629
480 664 8972 fax

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd:

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:28 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: JAY SCHROEDER <cccp1@aol.com>
Date: Sunday, October 20, 2024 at 4:19:50 PM UTC-7
Subject:
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>, Podiumclub Info <info@podiumclub.com>

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Frank Schroeder

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:29 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Robert Paulsen <lifefit7@yahoo.com>
Date: Friday, October 18, 2024 at 6:13:35 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club <info@podiumclub.com>

October 18, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
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Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Robert Paulsen
PC MEMBER

Sent from my iPhone

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:29 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Ashten Bush <ashtencbush@gmail.com>
Date: Friday, October 18, 2024 at 7:22:09 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>, info@podiumclub.com <info@podiumclub.com>

October 18, 2024
Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007
Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)
RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7 th , 2024
Dear Chair, Council Members, and Members of the Governor's Regulatory Review Council,
I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7 th , 2024.
I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.
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I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.
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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

--
Ashten Bush
480-695-6378
ashtenbushracing.com

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:30 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Matt Hollander <matthollander0216@gmail.com>
Date: Friday, October 18, 2024 at 7:37:25 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club <info@podiumclub.com>

October 18, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

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Sincerely,

Matt Hollander

(805) 286-7410

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:33 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Shane DeBrock <sdebrock@icloud.com>
Date: Friday, October 18, 2024 at 10:04:11 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 18, 2024

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Sincerely,
Shane DeBrock

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:38 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Pete Peterson <paysonpete@gmail.com>
Date: Sunday, October 20, 2024 at 12:48:23 PM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

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Sincerely,

Peter Peterson

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:31 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Alan Chook <alan@theapplexchange.com>
Date: Friday, October 18, 2024 at 9:19:28 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 18, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

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John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

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Sincerely,

Alan Chook
602-492-7575

The AppleXchange

alan@theapplexchange.com

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:40 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Jayson Citron <Jayson@desertroadracing.org>
Date: Monday, October 21, 2024 at 8:44:23 AM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 21, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Jessica Klein, Chair

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Sincerely,

Jayson Citron

480-229-9084

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:36 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Chris Thompson <zip465@gmail.com>
Date: Saturday, October 19, 2024 at 8:31:41 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club <info@podiumclub.com>

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
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Sincerely,
Chris Thompson

310.462.1140

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:37 PM
To: Simon Larscheidt <splarscheidt@gmail.com>

---------- Forwarded message ---------
From: Bill Tybur <tyburbill@gmail.com>
Date: Sunday, October 20, 2024 at 12:32:59 PM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club <info@podiumclub.com>

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Sincerely,

William P. Tybur
1907 E. Rhea Road
Tempe, AZ 85284

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:30 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Holly O. <applestar13@gmail.com>
Date: Friday, October 18, 2024 at 8:16:36 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 18, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

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Sincerely,
Holly Oneal

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:39 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Jens Plougmann <jcplougmann@gmail.com>
Date: Monday, October 21, 2024 at 7:55:17 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

October 21, 2024

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Jens Plougmann

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

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1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:33 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Dylan Hatch ProAutoSports <dylan@proautosports.com>
Date: Saturday, October 19, 2024 at 9:17:17 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

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I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Dylan Hatch

ProAutoSports Track Days

Marketing & Communications Director

480-664-3872

www.proautosports.com

PROAUTOSPORTS.com
ARIZONA'S PREMIER HIGH PERFORMANCE DRIVING & ROAD RACING ORGANIZATION
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Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:31 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Hilary Allen <hilary.d.allen@gmail.com>
Date: Friday, October 18, 2024 at 8:49:09 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>, info@podiumclub.com <info@podiumclub.com>

October 18, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

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affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

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Sincerely,
Hilary Allen

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

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I look forward to your support in approving these crucial new rules.

Sincerely,

SOUTHWEST REALTY SERVICES LLC

Larry A. Fink, Manager

SRS Advisors LLC

P.O. Box 80770

Phoenix, Arizona 85060

(602) 989-9899

ROSE LAW GROUPpc
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October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)

Dear Members of the Governor's Regulatory Review Council,

I am writing on behalf of Walton Global, one of Pinal County's largest landowners, with over 10,000 acres of holdings. Walton Global is deeply committed to fostering the sustainable and prosperous future development of Pinal County.

The current state of the Arizona Department of Water Resources (ADWR) regulations hampers Pinal County's ability to maintain the momentum of development that has begun, and to continue building thriving communities through investment in employment opportunities. Therefore, Walton Global fully supports the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

Water policy holds the keys to the future of Pinal County, shaping the region's potential for growth and prosperity. We view this proposal as a pivotal and collaborative step forward, creating a balanced approach that supports economic development while safeguarding vital water resources. By ensuring long-term water sustainability, this initiative opens the door for continued investment from outside entities, benefiting our communities for decades to come. This policy not only secures the future of our region but also reinforces Pinal County's position as a destination for innovation and growth.

The goal of these new rules is to provide a third method for water providers and communities to reduce their reliance on groundwater and diversify their water portfolios, ensuring that existing, committed, and future demands benefit from a secure water supply. This method, known as the Alternative Designation of Assured Water Supply (ADAWS), offers a path for water providers without a current Assured Water Supply designation to secure one. The benefits extend to existing residents and businesses, as ADAWS requires providers to offset current groundwater pumping with a new, non-groundwater supply as new developments come online. This will diversify the water supply portfolio, creating a more sustainable resource for all, which is critical for maintaining strong property values, a healthy business climate, and an excellent quality of life. In essence, these new rules provide a path forward for new subdivision development on lands not already covered by a Certificate of Assured Water Supply (CAWS).

Under the current regulations, no viable path exists, which threatens Pinal County's future economic prosperity and negatively impacts the outlook for current residents and businesses. As a community, we can no longer depend solely on groundwater. Each day we delay investing in sustainable water supplies further jeopardizes the affordability of housing and the region's future

growth. The new rules present a reasonable, forward-looking solution to keep building strong communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure Arizona's regulatory processes are clear, effective, and aligned with the needs of our communities. I look forward to your support in approving these vital new rules.

Sincerely,

Jordan R. Rose

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
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RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)
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Sincerely,

James M. Williams
4397 W Rickenbacker Way
Chandler, AZ 85226

Arizona State Senate

Office of the President

October 21, 2024

Via E-Mail: jessica.klein@azdoa.gov

Jessica Klein
ADOA General Counsel and Chair
Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

RE: Public Comment Period for Proposed ADWR ADAWS Rules

Dear Chairperson Klein,

I am writing to request that the Governor's Regulatory Review Council ("Council") delay voting on the Arizona Department of Water Resources ("ADWR" or the "Department") Notice of Final Rulemaking ("Notice") for the Alternative Path to Designation of Assured Water Supply ("Proposed Rules"). ADWR submitted the Proposed Rules on October 7, 2024, and has requested placement on the Council's November 5, 2024, agenda. From the date of submission to the Council, that scheduling would only provide 22 days until the Council's study session and 29 days until the Council's regular meeting.

The Proposed Rules represent a seismic shift in water policy that should be carefully considered instead of rushed. The Council must table the Proposed Rules until a subsequent meeting because it would be illegal and improper to consider them without providing adequate time for public comment. Additionally, we request that the Council direct ADWR to resubmit its Notice with a corrected cover page clarifying whether ADWR is conducting a regular or expedited rulemaking and, if ADWR is proposing to conduct expedited rulemaking, to comply with the additional notice and comment requirements prescribed by A.R.S. § 41-1027(B) and (C).

(1) The Council Must Allow for a Separate 30-day Comment Period

A.R.S. § 41-1052(I) provides that "[a]t any time during the thirty days immediately following receipt of the rule, a person may submit written comments to the" Council. This thirty-day public comment period runs from the date that the Council receives a Notice of Final Rulemaking. The Council's own rulemaking flowchart acknowledges that there is "a separate required 30-day public comment period" after an agency submits a notice to the Council.[1] The Council's regulations account for considering public comments.[2] Considering the Proposed Rules before the public comment period has ended defeats the point of allowing comments in the first place.

(2) The Council Has Authority to Table the Rule

A.R.S. § 41-1052(I) requires the Council to either return or approve a proposed rule within 120 days of receipt of a Notice of Final Rulemaking. Here, ADWR submitted its Notice on October 7, 2024. That means that the Council could wait to address the Proposed Rules until as late as its February 4, 2025, regular meeting, which is exactly 120 days from the date of submission.

(3) Substantive and Procedural Concerns Justify Delaying the Vote

During ADWR's consideration of public comments under A.R.S. § 41-1023, several interested parties raised substantive concerns about the Proposed Rules that merit serious consideration. These include concerns: that the Proposed Rules rely on the Department's groundwater modeling despite not disclosing it as a "study," as A.R.S. § 41-1052(D)(8) requires; that the Department's economic analysis is not adequate or accurate, as A.R.S. § 41-1052(D)(1) and (2) require; that the Proposed Rules are not the least burden and cost alternative for municipal providers, as A.R.S. § 41-1052(D)(3) requires; and that the Proposed Rules are illegal, inconsistent with legislative intent, and impose licensing conditions that are beyond the scope of the Department's authority, as A.R.S. § 41-1052(D)(5) prohibits. It is critical that the Council take the time to consider each of these concerns before voting on the Proposed Rules.

There are also procedural issues that should concern the Council. ADWR's cover letter appears to mistakenly state that the Department is conducting or requesting an expedited rulemaking, despite the Department not filing a Notice of Proposed Expedited Rulemaking with the Arizona Secretary of State, filing a Notice of Final Expedited Rulemaking with the Council, or receiving approval from the Governor to conduct an expedited rulemaking. The cover letter also does not properly identify ADWR's Deputy Counsel. To correct this, the Council should direct ADWR to resubmit its Notice with a corrected cover letter, clarifying which path the Department is seeking to pursue.

In addition, if ADWR is proposing expedited rulemaking, the Council must ensure the Department complies with the additional notice and comment requirements of A.R.S. § 41-

[1] Available at: https://grrc.az.gov/sites/default/files/2023-01/2022%20Regular%20Rulemaking%20Flowchart.pdf
[2] *E.g.* A.A.C. R1-6-201(D) (providing that the Council shall notify an agency of comments received by the Council).

1027(B) and (C), which require the Department to explain why the Proposed Rules meet the requirements of expedited rulemaking under A.R.S. § 41-1027(A), submit the Department's explanation to the Arizona Secretary of State for publication in the Arizona Register, and allow members of the public to submit written comments on the Department's explanation for thirty days.

Regarding notice, it is perhaps most troubling that ADWR submitted its Notice without notifying members of the public. Although ADWR submitted its Notice to the Council on Monday, October 7, we only found out about it on Friday, October 11, when ADWR quietly uploaded a copy buried in the middle of its webpage for the Proposed Rules. ADWR did not notify members of the public who commented on the Proposed Rules. Because the Council does not post agendas for its meetings until a week before, many interested members of the public likely do not know that the Council could be considering the Proposed Rules at its November 5, 2024, meeting. This undermines the public's ability to submit written comments to the Council during the mandatory additional 30-day comment period under A.R.S. § 41-1052(I).

(4) Conclusion

At a minimum, the Council cannot hear the Proposed Rules at its November 5, 2024, meeting and must allow a full thirty days to ensure that members of the public have an adequate opportunity to comment. The Council should also direct ADWR to resubmit its Notice with a corrected cover letter to clarify whether the Proposed Rules are expedited.

Water management is the most important issue for the continued vitality of Arizona. The Proposed Rules arguably represent the most significant changes to Arizona's water policy since the 1980 Groundwater Management Act. This shift must be carefully studied instead of rushed.

Respectfully,

Warren Petersen
President of the Arizona State Senate

HBACA

Home Builders Association of Central Arizona

September 23, 2024

Sent via Email

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007
docketsupervisor@azwater.gov

Re: Home Builders Association of Central Arizona Comments on Proposed Alternative Designation of Assured Water Supply Rules

Dear Ms. Scantlebury:

On behalf of the Home Builders Association of Central Arizona ("HBACA" or "Association") please accept the following comments on the Department's proposed rules related to the Alternative Designation of Assured Water Supply ("ADAWS") process. Notice of Proposed Rulemaking published in the Arizona Administrative Register on August 23, 2024, Volume 30, Issue 34. The HBACA is a trade association representing the residential construction and development industry. The Association acts as a source of timely and reliable information concerning the state of the local building industry and works to eliminate overly restrictive and costly building laws and regulations which drive up the cost of housing. Since 1951, the HBACA has served as the voice of the home building industry.

The release of the Pinal Active Management Area Groundwater Model in 2019 and the Phoenix Active Management Area Groundwater Model in June, 2023, and the moratorium imposed by Governor Hobbs on new determinations of assured water supply in the Phoenix metropolitan region, have adversely affected the residential for-sale housing industry disproportionately and unfairly. For the last nearly 30 years, for-sale residential housing, being developed on "subdivided land" as referenced in A.R.S. § 45-576, has been the most sustainable user of groundwater within the Active Management Areas. All homes built for sale have either been constructed in and served by a provider holding a designation of assured supply, or they have been issued Certificates of Assured Supply. In either case, for these three decades, for-sale residential housing's use of groundwater has been officially determined to be consistent with the achievement of the Phoenix and Pinal Active Management Area goals. In the Phoenix Active

Management Area, this has been primarily through 100% replenishment through the Central Arizona Groundwater Replenishment District ("CAGRD").

This is in sharp contrast to other groundwater uses in the Active Management Areas, most notably agricultural users, and those industrial (including multi-family for-rent housing) users in areas outside of the existing designated providers. These uses require no assured water supply, have no replenishment obligations, and are some of the largest consumers of groundwater. Yet the Phoenix groundwater model and the moratorium have had no effect or negative impact on these users. Instead, we have seen a boom in industrial development, build-for-rent housing, and commercial development based on minor land divisions.

All of this occurred during Arizona's nationally recognized housing supply and affordability crisis. Queen Creek, Buckeye, the west Phoenix areas served by EPCOR, and Pinal County are some of the fastest growing communities in the United States. However, subdivisions in these areas have been literally on hold since 2019 in Pinal County and as early as the summer of 2022 in most of the Phoenix Active Management Area, with no realistic end in sight. Investment in Arizona housing is delayed, infrastructure is stalled due to lack of a clear path to development, and housing prices are escalating rapidly due to the lack of supply. Homeownership is now a distant longing for many Arizonans. This is a matter that should be of deep concern to the administrative governance of the State of Arizona.

The solution to these water issues, thus far, has been to attempt to create a formula upon which the fastest growing, but undesignated water providers in the Phoenix and Pinal Active Management Areas might pursue an "alternative path" toward a designation of assured supply. To this end, the Arizona Department of Water Resources ("ADWR" or "Department") has drafted, circulated, and now formally submitted a proposed set of rules to create this alternative designation concept, commonly referred to as "ADAWS."

The HBACA supports the ADAWS concept for Queen Creek, Buckeye, and private utilities such as EPCOR and Arizona Water Company to become designated water providers. However, as the industry most impacted by these rules, we believe it is vital that the Department's rules are workable and fair. Additionally, the rules should be the least economically burdensome process for those providers and their constituent customers, particularly home builders and homeowners. Moreover, our home building industry must be allowed to continue to build and grow new planned communities to create a revenue base for those providers' acquisition of new water resources and the infrastructure necessary to produce, treat, and deliver those resources. The infrastructure costs funded by development impact fees to deliver water are already creating an impediment to new home construction, and a financially burdensome ADAWS will only compound this existing problem. This is not a home builder only problem. Without the infrastructure investment made by home builders, other land uses (i.e., commercial and industrial) will have nothing to tie into. Finally, we want to ensure that our members' projects that are currently on hold can immediately resume and begin to generate a return on the billions of dollars of stranded investment in those areas.

In these areas, we find the proposed rules fall short. The financial burdens of the ADAWS concept will once again fall unfairly and disproportionately on the home building industry, which is always at the front end of the water development requirements of any municipal water provider. There is no immediate or temporary relief for stalled subdivisions to resume large scale infrastructure projects necessary to achieve ultimate water service and, as importantly, sewer and wastewater treatment and storage facilities. The state imposed tax (variously called an "offset" or "premium") on new water supplies brought in by development cannot realistically be borne by the water provider, and will ultimately fall on the land developer and, in turn, on the eventual homeowner. There is no assurance that the program will be implemented quickly, and all indications are that the complexities of resolving an application for an ADAWS will take months if not years to complete.

Nor do we believe that the true economic impacts of the proposed ADAWS rules have been accurately considered, The Department has prepared, and posted on its website, an Economic, Small Business, and Consumer Impact Statement ("Impact Statement") that we have also reviewed. We asked Elliot D. Pollack & Company to review it as well and provide their experienced insight into the economic impact of these rules. They have prepared a memorandum summary of their findings, which we have attached to these comments for your consideration.

One area where the HBACA could see significant improvement in the proposed ADAWS concept is for the proposed tax on new alternative water supplies be directed to, and limited to, those sectors of the municipal service area that are responsible for the groundwater "mining" that the Department is trying to prevent. If the definition of "Alternative New Supply" were modified to require the provider to quantify the volume of water dedicated to non-subdivided land (which has heretofore not been contributing to mined groundwater) and reduce the provider's reduction of available groundwater only equivalent to that amount, much of the disproportionate hardship on developers of subdivided land would be removed. We have further discussed this improvement at the end of our analysis here.

With this background, we turn our attention to the specific issues we perceive in the proposed ADAWS rules.

<u>The Proposed Rule is Not an Option; It is a Licensing Requirement</u>

The preamble to the proposed rule strenuously attempts to depict the ADAWS as a mere option available to those municipal providers that may choose to pursue it. In fact, subdivided land development has been stalled in the fastest growing communities for the last two years in Maricopa County and five years in Pinal County. and every indication from the Department is that no new determination of assured water supply will be issued in the Phoenix or Pinal Active Management Areas unless the (currently undesignated) municipal provider complies with the ADAWS. While we recognize that the Department is contemplating another rule (the "commingling rule") that might allow some temporary relief, there are problems with that rule as well, which we address in a separate set of comments.

The reality is that the Department has done all in its power to make the ADAWS the only option to restart large scale residential development. As such, it is difficult to view the ADAWS as anything less than a mandatory requirement for residential growth in the currently undesignated provider municipal service areas.

The Proposed Rules are Grounded on a Faulty Groundwater Model Premise

A.R.S. § 41-1052(D)(8) requires that the preamble to the proposed rule disclose a reference to any study relied upon in the agency's justification for the rule. In the ADWR preamble, under Item 7, the Department lists "none" as the answer to this requirement. Nevertheless, the Department does reference both the "2019 Pinal model" and the "2023 Phoenix model" to establish the premise that there is currently no physically available groundwater to support a determination of an assured water supply in the Pinal or Phoenix Active Management Areas. These "models" are computer numeric studies that attempt to predict future water levels in the aquifers underlying these Active Management Areas. As noted in the preamble, the conclusion of these models, according to the Department, is that there are "unmet demands" within the model study area, and isolated areas where depth to water may exceed 1,000 feet (1,100 in Pinal) below land surface. Based on this premise, the Department concludes that the proposed alternative path to designation is justified because "Any costs associated with ADAWS are outweighed by the benefits when compared to the available alternatives." If one assumes that groundwater is not an alternative, then the "available alternatives" are few if any.

There are several problems with the reliance on these models to create the premise. First, the Department justifies lack of groundwater based on a notion of "unmet demand." These words do not appear in any statute or rule relating to the assured water supply program. It is a standard created wholly by the Department's interpretation and implementation of its rules, rather than the text of the rules, or the statutes. Furthermore, the calculation of an "unmet demand" is determined largely by placement of hypothetical wells by the Department in the future projections of the model domain. Landowners within the Hassayampa Sub-Basin of the Phoenix Active Management Area have engaged Matrix New World Engineering to do an in-depth analysis of the 2023 Phoenix Model. The results of that study have been submitted to the Department for review, and through that process, several adjustments have been made. But the final result of the Matrix model is that reasonable placement of wells within the model wholly eliminates the unmet demand cited by the Department across the entire municipal, assured water supply, and long-term storage credit recovery wells associated with the model domain.

Secondly, isolated depths to water across the entire Active Management Area may exist in some areas where rising terrain, impermeable underground deposits, and thin saturated aquifer zones contribute to lack of available groundwater at those specific locations. A.R.S. § 45-576, the statute which governs the foundation of the assured water supply program, does not require available groundwater in all areas. Rather, it focuses on "sufficient" groundwater that is "continuously available to satisfy the water needs of the proposed use." This is a site-specific determination that does not justify a conclusion that a depth to water issue in Apache Junction means that there is no physically available groundwater in central Buckeye. In fact, central

Buckeye is generally regarded as a "waterlogged" area where depth to water is exceedingly shallow—20-30 feet below land surface.

Thus, use of the 2019 Pinal model and the 2023 Phoenix model to justify the cost to benefit analysis of the rules creates an unrealistic, and statutorily unjustified restraint on the physical availability of groundwater that would support alternatives to the proposed rule. These alternatives would cost dramatically less to home builders and affected citizens than the proposed ADAWS alternative.

- The rule proposal is deficient on its face because it does not adequately disclose the nature of, and the extent of the impact of, the 2019 Pinal model and the 2023 Phoenix model as required by A.R.S. § 41-1052(D)(8).
- The Council should consider whether these models have been tested or subjected to peer review publications, such as the Matrix study. A.R.S. § 41-1052(G)(4). Particularly, inquiry should be made as to whether the assumptions underlying the Department's projection period of the model have been reviewed by anyone outside of the Department.
- The Council should consider whether the methodology and approach of these models are generally accepted in the scientific community, and particularly whether they are consistent with legislative intent or beyond the agency's statutory authority. A.R.S.§§ 41-1052(G)(6); 41-1052(D)(5); 45-576(M).

<u>The 25% Tax on New Alternative Supplies is Arbitrary</u>

The 2023 Phoenix model relied upon by ADWR to justify this rule, despite its faults as noted above, only projects a 4% deficit in available groundwater across the entire Phoenix Active Management Area model domain during the 100 year projection period. Only 2% of this projected shortfall is in the municipal/assured water supply/long-term storage credit recovery sector. Thus, for assured water supply purposes, this 2% shortfall is the "problem" sought to be reconciled by the proposed ADAWS concept.

Yet, under this proposed rule, the ADAWS applicant is first required to acquire or deploy a New Alternative Supply in order to qualify as an ADAWS applicant and, once acquired, the applicant is required to devote 25% of that new supply to a reduction in currently lawful groundwater use. This reduction is not tailored to any provider's actual use of groundwater or any relative contribution that provider or its customers may have made to any groundwater overdraft. Rather, it is an across the board requirement that seeks to force the ADAWS applicant to reduce its groundwater use by a factor of more than six times the projected shortfall in the entire Active Management Area.

No rationale, study, calculation, or empirical data is provided by the Department to support or justify the 25% tax on the New Alternative Supply. It is barely even mentioned in the preamble to the rule and is treated as if it were a benefit to the provider to "facilitate a transition away from groundwater."

As a simple proposition, requiring a few municipal water providers to bear a 25% groundwater tax on newly acquired or deployed non-groundwater resources to cure a 2% (or at most 4%) deficit largely created by others cannot be an "alternative that imposes the least burden and cost to persons regulated by the rule." A.R.S. § 41-1052(D)(3).

- No empirical evidence is offered by the Department to justify the 25% tax on a New Alternative Supply, making it an arbitrary percentage without rational basis on a cost/benefit analysis.

The 25% Tax on New Alternative Supplies is an Unreasonable Extraction

Similar to the arbitrary nature under which the 25% groundwater tax is imposed, the 25% tax on new supplies is a quasi-legislative exaction that exceeds the need to prove physically available groundwater under the assured water supply statute (A.R.S. § 45-576) and under a straightforward and reasonable interpretation of the assured water supply rules. If the modeling results show a 2% shortfall in the municipal/assured water supply groundwater (a determination that may still be subject to challenge), the exaction of a 25% reduction in groundwater available to the A-DAWS provider does not have a sufficient nexus to home building, exceeds home builders' proportionate impact on groundwater, and is contrary to the ruling in *Sheetz v. El Dorado County, California*, No. 22-1074, 601 U.S. ____ (April 12, 2024).

In both the preamble to the rules and in the Impact Statement, the Department characterizes the ADAWS concept as an "additional voluntary option[s]" to the existing rules that "create no new requirements." The Impact Statement goes on to state that "specific costs, benefits and impacts of this rulemaking were assess[ed] against these two alternatives—pursuing a determination of AWS [assured water supply] under the existing rules or not pursuing a determination." This analysis overlooks the fact that it is essentially impossible, at least in the most affected communities, to "pursue a determination of AWS under the existing rules." The ADAWS is not a voluntary option—it is the only option available to obtain new determinations of assured water supply in non-designated service areas or not to obtain a determination at all. When viewed realistically, the components of the ADAWS, particularly the 25% tax, is a mandated extraction to be able to continue development of subdivided land.

- The 25% tax on a New Alternative Supply is a government extraction on new development of subdivided land that is disproportionate to the need and not reasonably related to the problem, making it illegal under existing law and therefore not in compliance with A.R.S. § 41-1052(D)(3).

The 25% Tax on New Alternative Supplies will Directly Affect Home Builders

The preamble to the proposed rule and the Impact Statement build on the Department's characterization that any cost associated with compliance with the new rules will be borne by the water provider. For example, the Impact Statement (page 8) suggests that all costs will be borne by municipal provider ratepayers but "How these costs are distributed among the ratepayers is determined by the utility through ratemaking processes, which are specific to the provider and the community." As far as the cost impact to developers, the Impact Statement goes on (page

14) to state that the "water provider will decide how water supply costs are passed through to a developer. Compared to the traditional rules or no designation, these alternatives could allow for additional development."

- This is a rather naïve or intentionally misdirected view of the how the costs will actually be borne. It is common knowledge, certainly among experts in the water field, that utility service start-up costs for new development (water resource acquisition, infrastructure, regulatory compliance) are borne by the developer. In the case of ADAWS, a 25% tax on new supplies sufficient to allow development will be a cost to be passed on to developers, with the "understanding" that these costs are mandated by state law, not municipal provider regulation, and are therefore simply a cost of doing business. To assert that the economic cost of ADAWS will have no effect on small businesses, such as small home building concerns, is not justifiable (Impact Statement at page 13—Costs to Small Businesses—"None Identified"). From the HBACA perspective, as vetted with our constituent members over the course of many discussions, the cost of a New Alternative Supply, including the 25% tax, will be borne by the landowner/developer/homebuilder. The Department designed this tax to force water providers to reduce groundwater use. Yet, it is being imposed on the one industry that does not mine groundwater, does not contribute materially to any groundwater deficit, and does not receive any benefit over the traditional assured water supply program in place until the groundwater moratoriums became effective. The Impact Statement thus does not accurately reflect the true costs of the proposed rule and does not accurately reflect who will bear those costs, making it not generally accurate as required by A.R.S. § 41-1052(D)(2).
- The cost/benefit analysis does not address the inequity of imposing financial burdens on the homebuilding industry and makes no effort to select alternatives that impose the least burden on this particular industry that will be highly regulated by the rule.

<u>The 25% Tax Is Compounded by the Need to "Gross Up" the Alternative Supply</u>

Because the Department's characterization of the economic burden of the 25% tax falling solely on the water provider, it also overlooks the side of the equation that is concerned with meeting a specific quantity of water demand. For example, if a development needs 100 acre feet of water per year to satisfy the projected demand, and the developer is required to cover that demand, the developer must bring 100 acre feet net to the provider. If the developer attempts to bring 125 acre feet to meet the demand plus the 25% tax, the developer will still come up short. This is because the tax is imposed on the total quantity of the new supply. Proposed Rule A.A.C. R12-15-710 (H)(2) and (I)(2). If the New Alternative Supply Volume is 125 acre feet, the rule instructs that the 25% of the new volume shall be multiplied by 100 then subtracted from the provider's existing groundwater supply. Thus, the 25% of the 125 acre feet (31.25 acre feet) is the basis of the deduction. Translated back to the projected annual demand, this leaves only 93.75 acre feet to service the new development.

This calculation is familiar to anyone attempting to contemplate what gross amount is required to yield a desired net benefit, It is often referred to as a "gross up" calculation derived from the standard formula:

$$\text{Gross amount needed to offset new subdivision demand} = \frac{\text{Net amount homebuilder would have to convey to provider}}{1 - \text{25 percent "tax" on New Alternative Water Supply}}$$

$$\text{Gross amount needed to offset new subdivision demand} = \frac{100\ \text{AF/yr}}{1 - .25}$$

$$\text{Gross amount needed to offset new subdivision demand} = 133.33\ \text{AF/yr}$$

To the extent that any developer is required to cover the projected demand of a new development, it will be based on the net amount required to service that development. The acquired supply will have to be "grossed up" to yield the desired net. The tax to the developer is thus 33.33%, not 25%.

- The Rule package does not accurately calculate the true cost of the 25% tax because it fails to recognize the need to achieve a specific net increase in available water in order to provide sufficient resources for planned development.

<u>The 25% Tax on is Further Compounded on Effluent</u>

The definition of New Alternative Supply does, and is apparently intended to, cover the recycled and reclaimed water of effluent. As development occurs, new sewer collection and treatment systems are built. The reclaimed water (effluent) is generally recharged into the aquifer and later recovered, either on an annual or long-term basis. To be included within a designation, including ADAWS, the provider collecting, treating and eventually using the effluent must show that it is reliable under the terms of the assured water supply program. In years past, this effluent was considered a resource for new growth and, in many cases, the effluent created by large master planned communities was dedicated to the continued and ongoing development of those communities.

Under the ADAWS program, new growth will be required to bring 133.33% of its projected demand to the municipal provider to obtain a commitment of water service. The effluent generated by the development, if used for an addition to the ADAWS, will again be subject to a 25% tax to further reduce groundwater use within the provider's service area. This means that the water resource brought to the service area as a new supply will be taxed twice, and beyond, as each new iteration of effluent becomes subject to the tax.

Furthermore, the significant infrastructure required to collect, treat, and utilize effluent will also be subject to the 25% tax, as it will be producing a water supply that will be used to replace an existing supply that requires much less infrastructure. The Impact Statement, and the proposed rule package as a whole, does not consider or address this lost cost, most of which will be passed on to the homebuilding industry as the homebuilding industry is generally required to design, engineer, and construct this infrastructure as part of the cost of obtaining municipal water service.

Again, if the quantity of effluent is being used for new growth, and a specific quantity is needed to meet a proposed new growth demand, the "gross-up" calculation again applies, meaning that the provider must in fact dedicate 133.33% of the effluent to offsetting groundwater if it is to meet a net 100% volume for new growth.

- The Impact Statement does not accurately reflect the true costs of the proposed rule as it relates to infrastructure required to collect, treat, and utilize effluent and does not accurately reflect who will bear those costs, making it not generally accurate as required by A.R.S. § 41-1052(D)(2).

<u>The Proposed Rule Exceeds the Statutory Authority of the Assured Water Supply Program</u>

As frequently stated in the rule preamble and the Impact Statement, the principal goal of the assured water supply program is to provide consumer protection to those who choose to purchase homes in Arizona. Its fundamental purpose is to review whether or not a water supply for a development based on subdivided land will be secure for the next 100 years. The statutory guidance of A.R.S. § 45-576(M) is clear: "For the purposes of this section, "assured water supply" means ... Sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years." This is a directive to ensure that the needs of the proposed use will be available, not a legislative directive to require, incentivize, or prohibit the use of any one particular water resource.

The HBACA understands that the protection of Arizona's aquifers is a legitimate state concern and that unbridled use of groundwater will lead to depletion of the groundwater resource. But the proposed rule attempts to use the assured water supply program to correct some shortcomings of the 1980 Groundwater Management Act on the back of certain uniquely identified water users, namely developers of subdivided land—which is basically synonymous with the development of for-sale residential housing. The homebuilding industry has been subject to the most stringent requirements of protecting the aquifers of the Phoenix and Pinal Active

Management Areas since the adoption of the assured water supply rules in 1995. Each subdivided development has been required to show, and do its part, to eliminate the use of mined groundwater within these Active Management Areas, either through the use of credits accrued from retirement of agricultural land or through active, and costly, groundwater replenishment.

The proposed rule seeks to impose yet an additional burden on the development of subdivided land by requiring the reduction in heretofore legal use of groundwater by only those municipal providers that do not currently have a designation of assured water supply. Furthermore, no distinction is drawn between water use sectors that are contributing to the use of "mined" groundwater and those, like for-sale residential housing, that are not. Rather, the clear impact of the rule package as a whole is to place the financial burden of reducing the unreplenished use of groundwater on the very sector of the economy that is not the source of the problem. The justification of the entire rule hinges on the benefits that the state as a whole might realize from enhanced groundwater restrictions, while ignoring the fact that the cost burden will fall largely on the homebuilding industry.

The assured water supply program is a vital part of the State's water management and a program that is vigorously supported by the homebuilding industry, but this program has its limits. By first creating an absolute prohibition on the legitimate use of groundwater, then proposing an "alternative option" to a moratorium on new subdivided land development, the cost of which will be borne largely by the homebuilding industry, the Department seeks to balance the groundwater budget by taxing those who are least responsible for the imbalance.

- The proposed ADAWS Rule is inconsistent with the intent of A.R.S. § 45-576 and beyond the agency's statutory authority, and thus not subject to approval under A.R.S. § 41-1052(D)(5).
- The proposed ADAWS Rule is made under a specific grant of authority but exceeds the subject matter areas listed in A.R.S. § 45-576, thus not complying with A.R.S § 41-1030(D)(1).

<u>Suggested Modifications to the Proposed Rule to Place the Burden Where it Belongs</u>

The HBACA recognizes that designations of assured water supply can be an excellent water management program for the Active Management Areas. To that end, we support a program that would provide an opportunity to overcome the current moratoriums in the Pinal and Phoenix Active Management Areas. We believe, however, that the proposed ADAWS rule takes an unsophisticated broadside approach to a complex problem of assigning the relative burden of the problem sought to be solved. We believe this could be largely mitigated if the rules were refined to accomplish the following:

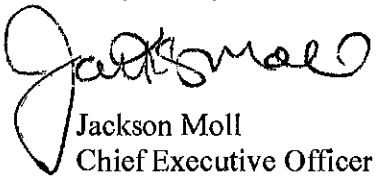
- The mandatory reduction of the provider's current groundwater portfolio should be in direct proportion to the provider's current unreplenished groundwater use, rather than a one size fits all 25% tax on every provider.

- The cost of the reduction in current groundwater use should be targeted at those users within the provider's service area that have (heretofore and before the ADAWS is issued) been using groundwater without a replenishment obligation. This can be accomplished by creating a mechanism in the rule to determine the annual (translated to 100 year as appropriate) volume of this unreplenished use, then requiring the provider to offset that use by a percentage each year. This would tie the tax on new alternative supplies directly to offset groundwater mining and allow the provider justification for imposing that tax on industries other than the homebuilding industry.
- The mandatory reduction should have a limit. Once a provider becomes designated, and has reduced its groundwater consumption by the volume represented by heretofore unreplenished groundwater use, the tax should terminate.
- The tax should not be applied to effluent, which is an efficiency use of the water in the new alternative supply. Once taxed, that new supply should not be taxed again. A refinement may be to assign the tax to the relative percentage of heretofore unreplenished groundwater use within the provider's service area to again tie the tax to the mining problem sought to be solved.

These refinements do not address some of the underlying problems with the ADAWS approach, as discussed above, but they would make the program more palatable to the homebuilding industry, which is the major sector affected by the proposed ADAWS rule.

While the HBACA cannot support the ADAWS rules as proposed, we can work with the Department to make changes that would resolve the unfairness of the impact to our industry.

Very truly yours,



Jackson Moll
Chief Executive Officer
Home Builders Association of Central Arizona

September 20, 2024

Ms. Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, Arizona 85007

Re: ADWR A.R.S. § 41-1055(B) ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT Review

Dear Ms. Scantlebury:

Elliott D. Pollack & Company was asked to conduct an initial review of the Economic, Small Business, and Consumer Impact Statement (EIS) produced by the Arizona Department of Water Resources (ADWR) for rule modifications titled, "*ASSURED WATER SUPPLY RULE MODIFICATIONS TO PROVIDE AN ALTERNATIVE PATH TO DESIGNATION OF A 100-YEAR ASSURED WATER SUPPLY (ADAWS) IN THE PHOENIX AND PINAL AMAS AND TO ALLOW CERTIFICATE OF ASSURED WATER SUPPLY APPLICANTS IN THE PHOENIX AND PINAL AMAS TO COMMINGLE WATER SUPPLIES FOR A LIMITED TERM*". Our review does not opine on water policy. Rather, it focused on the merits of the Economic Impact Statement to determine if the probable economic costs and benefits to affected persons were properly identified.

Overall, the EIS only provided a narrative. It is lacking in critical analyses that support its assumptions or financial metrics that could inform affected persons of the costs or benefits of the proposed rulemaking. We also found several instances where persons directly affected by the proposed rulemaking were not identified. We found no evaluation within the EIS of any alternative policies that could achieve the stated goals. Lastly, there is no information explaining how current or proposed policies are impacting affected regions or Arizona's competitive position. This results in an incomplete Economic Impact Statement and does not properly inform the regulated public.

Assumptions

The EIS notes an important assumption related to the physical availability of water in the Phoenix and Pinal AMAs, citing ADWR's recent groundwater model results which lead to their decision to halt the issuance of designations and certificates that rely on groundwater. As the EIS states "For new growth to occur under current conditions and the traditional AWS rules, developers in these areas will need to find renewable supplies (such as surface water or reclaimed water), the municipality or water provider must secure enough renewable supplies to become designated without the inclusion of groundwater in the portfolio." The results obtained from the models were the basis to form the policy decision to halt the issuance of

designations and certificates. This moratorium created the immediate need for the proposed rulemaking due to the economic costs from the initial policy decision that could follow.

It is our understanding that the methodology used in those models has been seriously questioned and ADWR's resulting policy decisions were issued without public input. Stakeholders have identified the main reason for there being any "unmet demand" was the placement of wells in the model, a process that stakeholders found to be extremely arbitrary and included many well locations that a municipal provider would not use in placing its own wells. The "Updated Model" prepared by water resource engineering experts Matrix Solutions Inc, indicates that all of the volume currently reserved in Analyses of Assured Water Supply are in fact physically available.

Apart from that those concerns, the modeling conclusions themselves did not appear to represent an immediate emergency, yet drastic policy decisions were initiated, necessitating solutions to mitigate the economic costs that would follow. We question whether such urgency in enacting the initial policy to halt economic growth was warranted without an analysis of the regulatory assumptions. Affording additional time for further analysis on such a crucial topic would be enormously beneficial to the state, its political subdivisions, businesses, and Arizona residents. The further absence in the EIS of potential alternatives, outlining cost and benefit comparisons, or any resulting conclusions as to how this rulemaking was determined to be in the highest and best interest of the state is alarming.

Another underlying assumption of EIS for the rule modifications made by the Department is that they expect this rulemaking "to have long-term economic benefits" by providing an alternative path to obtaining a Designation of 100-year Assured Water Supply (DAWS). The Department points out that the rulemaking will reduce costs and add flexibility which will enable new development that could not occur under current AWS rules. We see no analysis supporting the claim for long-term economic benefits, which should include an analysis of the policies on economic competitive positioning (both locally for ADAWS regions and nationally as a state). The barriers of obtaining limited renewable supplies, purchasing all projected water demand before placing development in service, and replacing groundwater appear to remain a substantial financial burden to ADAWS applicants.

There are several economic benefits claimed within the EIS for some affected persons, which include increased housing supply, mitigating population growth disruptions, increasing land values, lowering property tax burdens, increasing state revenues, and supporting the homebuilding industry. There appears to be consensus that the existing AWS rules created economic harm by halting new investment and growth within the affected areas. The EIS only demonstrates that the proposed rulemaking *reduces* current barriers and costs compared to current AWS rules but does not demonstrate whether the new rulemaking reduces those barriers sufficiently enough to enable lost growth and investment to resume as it could under the previous system.

Affected Persons Not Identified/Costs not Explained

We find the approach taken to analyzing the economic benefits and costs in the EIS to be flawed. The approach only compares the rule modification to the existing AWS rules. Thus, the EIS fails to identify or calculate many costs of the proposal to affected persons, including the cost of new water supply, the cost of new infrastructure, and their ripple effects. This should be rectified. The following are several examples:

- **Non-Designated Providers.** The EIS fails to adequately explain the costs to a non-designated provider in order to achieve designated status with additional replenishment obligations applicable to existing development and the requirements for new development.

- **Homeowners.** The EIS claims that homeowners who purchase new homes in subdivisions with AWS determinations based on renewable supplies and replenished groundwater would receive lower property tax assessments if the water provider were a CAGRD member service area because the homeowner is not directly responsible for paying a CAGRD replenishment assessment. This fails to identify the additional costs associated with higher water rates that would be inevitable. The water provider or municipality would recover the costs of replenishment through water rates. Any conversion from CAGRD replenishment obligation would fall to the water provider and, ultimately, the customer. No analysis is provided comparing reduced property taxes to increased water rates.

  Another gap in the economic analysis is the cost of shifting existing member lands from a replenishment obligation paid through the CAGRD to acquiring new non-groundwater water supplies to eliminate the replenishment obligation altogether. That cost analysis should include an assessment of the fact that as Member Lands, these subdivisions have already paid significant fees to CAGRD to acquire supplies to meet replenishment obligations. By rolling these subdivisions into ADAWS, such lands would in essence be starting over in acquiring new supplies. This cost impact merits in depth analysis, which is lacking.

  The EIS also does not identify higher costs to new homeowners in the form of higher home prices that would be necessary to develop homes in ADAWS regions. Reduced housing affordability also impacts local economic conditions and the state.

- **Existing Non-Subdivision Development.** The EIS does not identify new costs to existing businesses or residents in affected areas that currently have no replenishment obligation. Increased water rates to existing customers are highly likely to recover the cost of procuring and delivering renewable water supplies.

- **Future Commercial/Industrial Development.** The EIS does not identify the increased costs to developers or potential users of commercial or industrial (non-subdivision) development in the affected areas. Increases in cost of development and operating costs also impacts local economic conditions and the state.

Alternatives

The EIS provides no substantive assessment of alternative courses of action to ADAWS that could have less adverse economic impact, such as changes in rules, policy or practices that would result in greater physical availability of groundwater. There is no mention of potentially less costly solutions or comparing the cost to develop and procure renewable water supplies to systems currently in place like the CAGRD. As mentioned previously, ADWR stifles any analysis in the EIS with the assumption that there is no physical availability of groundwater to support new growth and as such, the only path forward for such growth is ADAWS as proposed by ADWR. Yet, there is no indication in the EIS that ADWR has assessed any regulatory ways to identify greater supplies of groundwater to be physically available.

An example of an alternative, mentioned previously in our review, is well movement. At a minimum, ADWR should have assessed the cost of well movement or other infrastructure improvements to improve access to groundwater supplies to achieve greater physical availability compared to the anticipated costs of acquiring the New Alternative Water Supplies.

A financial analysis and comparison are warranted to support the proposed rulemaking to other alternatives and the EIS is lacking any such analyses. There appears to be sufficient resources and available expertise to indicate whether the new rule amendments are the best solution to sufficiently reduce costs, induce economic activity, and achieve sustainability goals.

Competitive Positioning

There is no mention of how current or proposed policies affect the competitive positioning of either the ADAWS regions to neighboring municipalities or the State of Arizona to other states and countries. While the proposed rulemaking provides an alternative path to development compared to current AWS rules, the costs associated for the anticipated new development are not outlined or compared to the cost to develop elsewhere. The cost of development within the affected areas under the proposed rulemaking will be substantially higher and will vary widely from location to location within each service area. This will affect home affordability and the viability of commercial and industrial projects. Additionally, local water rates will rise from their current levels across the water providers service area.

An analysis of short-term and long-term competitive positioning is warranted for inclusion in the EIS. This would provide clarity on the potential magnitude of any expected benefits that the EIS claims. It would also identify challenges to mitigate in order to improve the competitiveness of affected regions and the state.

Sincerely,

Danny Court
Principal, Senior Economist
Elliott D. Pollack & Company

HBACA

Home Builders Association of Central Arizona

September 23, 2024

Sent via Email

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007
docketsupervisor@azwater.gov

Re: Home Builders Association of Central Arizona Comments on Proposed Changes to R12-15-704 (Commingling)

Dear Ms. Scantlebury:

On behalf of the Home Builders Association of Central Arizona ("HBACA" or "Association") please accept the following comments on the Department's proposed rules related to the changes to rule R12-15-704 as noticed in the Notice of Proposed Rulemaking published in the Arizona Administrative Register on August 23, 2024, Volume 30, Issue 34, starting on page 2634. Our comments are enumerated below.

1. **The Department's Explanation of the Proposed Rulemaking in the Preamble, Section 6, Demonstrates that the Proposed Rule is Inconsistent with the Authorizing Statute and Exceeds the Department's Legal Authority:** Section 6 states the Department's reasons for this rulemaking. The Department begins by discussing in some detail the difficulties faced by subdivision applicants in obtaining new non-groundwater supplies to support new assured water supply determinations. We certainly agree with the Department's descriptions of the difficulties generally – it's tough and it's expensive and it's time consuming, even potentially impossible in cases. However, the Department's proposed commingling rule requirements does not actually address these difficulties and is based on a flawed summary of the current requirements. The Department's proposed rulemaking proposes to make it harder than under current law for subdividers to use a new, non-groundwater water supply to obtain a Certificate of Assured Water Supply for a subdivision.

   a. **Current Law Authorizes a Subdivider to Demonstrate the Availability of 100% of a Non-Groundwater Supply to Obtain a Certificate of Assured Water Supply for a Proposed Subdivision.** We agree with the Department that the applicable statute for the existing Certificate of Assured Water Supply rule,

R12-15-704, is A.R.S. § 45-576. Section 45-576 provides, in relevant part, "a person who proposes to offer subdivided lands, as defined in § 32-2101, for sale or lease in an active management area shall apply for and obtain a certificate of assured water supply..." for the subdivision. Subsection 45-576.M, as relevant here, provides that an "assured water supply" means that "[s]ufficient groundwater, surface water or effluent of adequate quality will be continuously available **to satisfy the water needs of the proposed use** for at least one hundred years..." (emphasis added). Rule R12-15-704, the only rule to be changed in this proposed rulemaking, lists the items a subdivider is required to provide in an application for a Certificate. These include in 704.B **"[a]n estimate of the 100-year water demand for the subdivision**", "[a] list of all proposed sources of water that will be used by the subdivision," and "[e]vidence that the criteria in subsections F and G of that rule are met. (emphasis added) Subsection 704.F (new applications) requires submission of evidence meeting a list of other rule requirements in R12-15-716 through R12-15-722.

R12-15-716 requires demonstration the new supply is physically available; R12-15-717 requires demonstration the new supply is continuously available; and R12-15-718 requires demonstration the new supply is legally available. R12-15-716, the physical availability rule, requires a subdivider to provide information about the proposed water supply for the subdivision that varies depending on the type of water offered. R12-15-717, the continuous availability requirement, requires evidence that there will be "adequate delivery, storage, and treatment works" in place in a timely manner to make the water available to the subdivision, with more specific requirements that vary depending on the type of water supply. For Certificate applicants, R12-15-718 requires a signed "Notice of Intent to Serve" agreement between the landowner and a water provider the meets the rule requirement. **If a subdivider demonstrates that 100% of the proposed use, in this case a non-groundwater supply will be supplied with available water as defined in A.R.S. § 45-576, the Department must issue the Certificate.**

b. **Current Law Does Not Prohibit a Water Provider from Commingling Water Supplies (<u>There are No "Commingling Constraints</u>").** In section 6 of the Preamble, the Department explains its position regarding the proposed Certificate rule change as follows:

> *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.***

(emphasis added). The Department later in the Preamble refers to this argument as a "commingling constraint" and a "legal barrier" for subdividers. The Department's assertions above in this quoted text are inconsistent with the plain language in A.R.S. § 45-576 as to Certificate requirements and are inconsistent with the Department's own current rules. The authorizing statute does not require a subdivider/landowner to solve any quantity of perceived insufficiency in a water providers' overall planned water supplies for a water provider's **other customers**, and there is certainly no prohibition in this context on mixing water supplies in pipes. A.R.S. § 45-576 requires only that a subdivider/landowner demonstrate that adequate water is being committed to satisfy the needs of the **proposed use**, the new subdivision. There is further no statutory authorization for the Department to require a subdivider to acquire and commit 130% of a proposed subdivision's water use.

The Department anticipates and responds to this comment in the Preamble as follows:

> *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.***

(emphasis added). The Department in this quoted explanation is essentially asserting that the Department must deny a Certificate to a subdivider for a proposed subdivision adding a new water supply to a mixed (commingled) piped water system within the Phoenix AMA (or Pinal AMA) unless the subdivider contributes an arbitrary quantity of water exceeding the proposed subdivision's demand to first resolve all of the "unmet demands" in the 100-year regional assured water supply projections for <u>other water users throughout the basin</u>.[1]

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[1] Groundwater supplies are not at issue when a subdivider brings 100% of a non-groundwater supply to support a Certificate, but the Department appears to be relying for its policy arguments in the Preamble on projections from early runs of the two cited regional groundwater models. These projections are outdated and should not be used to

Certificates of assured water supply are permits that a subdivider/landowner must obtain from the Department as a condition of subdividing the landowner's real property within an Active Management Area outside designation areas. *See* A.R.S. 9-463.01.I (cities and towns shall not approve a subdivision final plat unless the plat is accompanied by a Certificate); A.R.S. § 11-822.A (county cannot approve a subdivision plat unless it is accompanied by a Certificate).

If under the current statute and rules the Department were to deny a Certificate to a subdivider that has demonstrated an available non-groundwater supply for 100% of the proposed subdivision's demands solely based upon the fact that the new water supply will be "commingled" with a provider's other groundwater supplies in a region about which the Department is concerned, such a permit denial would be an unconstitutional taking under the Fifth Amendment of the United States Constitution. Requiring a single subdivider/landowner to secure and donate to other water users a new volume of water sufficient fill a modeled regional "hole" in an Active Management Area groundwater basin is clearly an unconstitutional permit condition. The United States Supreme Court earlier this year in *Sheetz v. County of El Dorado, California*[2] recognized that the question of whether a permit condition imposed on a landowner's use of its property is a taking can be complicated, but re-affirmed that permit conditions that require a landowner to give up more than is necessary to mitigate harms resulting from the new development have the same potential for abuse as conditions unrelated to the agency's purpose.[3] The Supreme Court held this constitutional limitation applies to the Department's Certificate requirements because it applies to all state and agency permits.[4] Under the Department's current rules, the Department must issue a Certificate when the subdivider has made the demonstration required under A.R.S. § 45-576.[5]

2. **<u>The Proposed Rule is an Unauthorized New and Disproportionate Tax on Subdividers</u>**. As explained above, the Department's proposal to require a subdivider/landowner in proposed subsection R12-12-15-704.N to donate 30% in excess of the water supply need of the new subdivision uses is effectively a new and substantial tax on subdividers. In practical terms, the value of this excess tax can be estimated in millions of dollars depending on the size

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support this proposed rulemaking. The Department's groundwater models for conservative planning purposes artificially constrain "usable" groundwater to 1000 feet or 1100 feet below land surface even if more water is physically available at greater depths, and the model assumptions ignore legally-required replenishment that significantly supplements groundwater supplies over time. Relying on such model runs to broadly conclude that all water providers in the basins will cease providing mixed water service to newly proposed subdivisions in the 100-year period beyond a Certificate application date is not credible.

[2] 601 U.S. 267 (2024).

[3] 601 U.S. at 276, *citing Dolan v. City of Tigard*, 512 U.S. 374, 393 (1994).

[4] 601 U.S. at 276-279 (applies to states and agencies).

[5] *See also* A.R.S. § 41-1001.01(8) (a person is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute or rule; *see also* A.R.S. § 41-1030 (providing for private enforcement action).

of the subdivision. The Preamble explains that, through the wording in subsection 704.N.4 of the proposed rule, the water provider would be responsible for securing the extra 30% supply, but this wording belies the fact that this rule is **a licensing requirement for individual subdividers** (not a rule applicable to water providers). This explanation ignores the obvious reality that subdividers in Arizona are routinely required to bear the cost of all new burdens placed on water providers and local jurisdictions by new development, and that burden will include this 30% donation. If the Governor's Water Policy Council feels strongly that Certificate water providers should be required to obtain 30% additional water supplies to support their existing customers as a matter of good water planning policy, then this new policy direction appropriately needs to be addressed outside the agency's licensing process for individual landowners, and outside this agency rulemaking process.

3. **The Proposed Rule will be Invalid under A.R.S. § 41-1030.A.** The proposed rule, requiring a licensee to donate 30% more water than is required to support the proposed development within the subdivision is invalid because, as is explained above, the rule is unconstitutional, inconsistent with the authorizing statute, and is not reasonably necessary to carry out the purpose of A.R.S. § 45-576, which is to require a subdivider to demonstrate 100% of the projected demand.

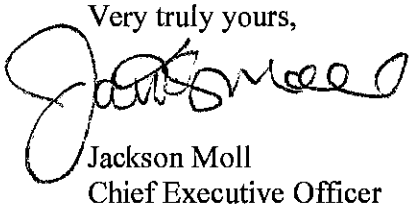
4. **There is No Reasonable Basis for the Date Restriction in the Rule**. We are confused why the rule contains a date limitation. Subdividers will still be able to obtain Certificates under A.R.S. § 45-576 without using the new rule without a date limitation. The end date for the proposed new rule language seems to have no rational relationship to the topic addressed in the rule. Does the Department intend with this date limitation to effectively end the issuance of Certificates not complete and correct on or before June 30, 2027? If so, this date limit is inconsistent with the authorizing language in A.R.S. § 45-576.

5. **Enrollment of Subdivisions as Member Lands in CAGRD is Not Required under Any Existing Law for Subdividers Demonstrating 100% Non-Groundwater Supplies for a Subdivision, even If the Water will be Mixed with Other Water in the Pipes. The Proposed Addition of a CAGRD Enrollment Licensing Requirement for Subdividers Who Also Choose to Donate 30% More Non-Groundwater Supplies to the Water Provider's Other Customers, Makes No Sense.** The Department has not provided a reasonable explanation for the requirement that a subdivision must be enrolled in the Central Arizona Groundwater Replenishment District (CAGRD) if the subdivision water supply availability is demonstrated using 100% non-groundwater supplies, even if that water is physically mixed with other water supplies. There is no existing law requiring water users to replenish groundwater when there is no groundwater use. Enrollment of a property as a member land in the CAGRD is a substantial added cost for a subdivider to obtain a Certificate (the license), another unauthorized tax, without a need for the enrollment for the subdivision in the application. For scope, the current cost to enroll one residential lot in the Phoenix AMA in CAGRD (that will not be using its services) is $391 for enrollment, with a required payment for a portion of advance replenishment, and an activation fee of $1,596. For enrollment of a 100-lot subdivision, this current cost would be approximately $200,000.

6. **The Preliminary Summary of the Economic, Small Business, and Consumer Impact Statement is Insufficient.** As described in the comments above, the proposed rule language would impose effectively new and substantial costs in the nature of a water tax and unnecessary CAGRD fees on individual subdivider/landowners seeking a license from an agency. The Department's description of this impact as a non-substantive change is inaccurate and vastly understates the costs. Further, although the Department describes the rule as a new "voluntary" path to secure a Certificate, the Department's indication in the Preamble explanation that the Department will deny Certificates to subdividers under existing rules even if they commit 100% of subdivision water demand through the application makes clear the Department believes it has closed the existing pathway to secure a Certificate (without a legislative change or rulemaking). Almost all Certificate water provider water systems in Arizona will be commingled, so the Department's position stated in the Preamble has broad applicability. This impact section needs to be revised to more accurately reflect the new burdens to be imposed on most subdividers seeking a new Certificate.

We appreciate the Department's consideration of our comments and request the Department abandon this proposed rulemaking in favor of a more appropriate future planning process.

Very truly yours,



Jackson Moll
Chief Executive Officer
Home Builders Association of Central Arizona

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: 100 Year Water Supply

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 10:11 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Jameson <cptjames72@gmail.com>
Date: Monday, October 21, 2024 at 12:05:32 PM UTC-7
Subject: 100 Year Water Supply
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Hello,

Casa Grande has been built out with the existing infrastructure that was installed before the 2008 housing collapse. Now the only new housing being built here are apartments because they aren't subject to getting a water certificate for each apartment like it has to be done with every house.

If the new method of ensuring a 100 year water supply doesn't apply to apartment complexes, condos and townhouses what's the point?

No new apartment complexes should be approved anywhere unless they can secure the same water rights as houses.

The new method must include houses and apartments, condos and townhouses.

Thank you,

Jameson Dedon
1756 E Desert Breeze Pl
Casa Grande, AZ 85122

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Groundwater

Simon Larscheidt <simon.larscheidt@azdoa.gov> Tue, Oct 22, 2024 at 1:33 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Kenna <kcnc50@gmail.com>
Date: Tuesday, October 22, 2024 at 11:35:46 AM UTC-7
Subject: Groundwater
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

If they cannot provide 100 yrs of guaranteed water.... no go. Housing costs are already wicked high. You can't have a neighborhood w/o water. They had it right in the 80's. Don't sell out our natural resources. The future gets bleaker and bleaker with each passing year. Slipping and sliding values....just a slight adjustment here or there....and no one considers anything other than money. We skirt the laws of man and run over the laws of nature/God. This is a sell out by elected government. I am appalled at how easily we "give it up". Backbones are missing here. Stand up for reality.

Kenna Collins

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)
Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007

RE: Keeping the American Dream Alive

Dear Chair and Council Members:

People have been moving to Arizona for decades to improve their station in life. Many started new businesses, employing workers and creating a society that makes us all proud.

Pinal County has been able to attract more than its fair share of vigorous, modern and sustainable businesses. One of the major reasons for the stampede to Pinal, is that business owners knew that their employees could easily achieve the American Dream of home ownership. Additionally, many Phoenix and Tucson residents have been priced out of their local market but were able to find value in Pinal.

New development of single-family housing has practically come to a standstill because the water supply has been turned off. In the short run, reducing the supply of homes will raise prices. In the long run it makes us look like poor civic

managers and will discourage businesses from locating to Arizona.

Arizona has a long history of collaboration on water issues for the public benefit. It would be a shame if this legacy ended today.

Sincerely yours,

Rebecca Roberts
Commercial Sales and Leasing

ARIZONA SONORAN
COPPER COMPANY

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:
RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to

ARIZONA SONORAN
COPPER COMPANY

invest in. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

George Ogilvie, P.Eng.

President & CEO
Arizona Sonoran Copper Company Inc.
950 West Elliot Road, Suite 122
Tempe, AZ 85284

CRESCENT BAY HOLDINGS
REAL ESTATE INVESTMENT & DEVELOPMENT

October 24, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007
Jessica Klein, Chair
Frank Thorwald, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Ms. Klein and Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital to promoting sustainable water management and economic growth in our state.

I have been active in community development in the Phoenix area since 1999, and companies with which I have been a principal have entitled, developed, financed, or sold more than 10,000 single-family residential homesites in over 20 communities (we are currently developing a 550-lot community in Maricopa). About 10 years ago, we attempted to acquire a 3,500+ acre parcel of land in Casa Grande for a mixed-use master-planned community of over 13,000 residential units. Although we were ultimately unable to make that acquisition, I followed the project's entitlement progression, which included being granted an "Analysis of Assured Water Supply" by ADWR and the expansion of Arizona Water Company's CC&N to include the project. However, in the wake of updated ADWR water models, the rigidity of the Assured Water Supply Program crippled Arizona Water Company's ability to become a Designated Water Provider for the project, indefinitely stalling the project's development.

With countless other examples of similar circumstances throughout Pinal County (particularly in Casa Grande and Coolidge), the ADAWS represents a thoughtful step forward for water policy in Arizona, and ADWR should be commended for its efforts. For this reason, I am writing to express my support for the ADAWS rules package submitted by ADWR on October 7th, 2024.

I look forward to your approval of these new rules and the economic and community development that is sure to follow.

Cordially,

Gregg N. Wolin, Principal
Crescent Bay Holdings, LLC
Crescent Bay Land Fund 1, LLC

ROSEMEAD PROPERTIES, INC.

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

As a local property owner, I am writing to express my strong support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option, which provides a balance between the two existing methods for securing an assured water supply determination. This new rules package introduces a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Many Representatives from business sectors in Pinal County are submitting letters outlining their support for ADAWS and I fully support and align with their perspectives. I encourage you to consider the adoption of the ADAWS, as it represents a significant advancement for Pinal County.

Given the current conditions on the Colorado River and increasing concerns regarding record heat, it is more important than ever that Arizona's Assured Water Supply program reflects our commitment to sustainable practices and demonstrates that Arizona remains a safe and attractive place for investment. The proposed rules package addresses recent groundwater modeling challenges that have hindered the issuance of new assured water supply determinations. Crucially, these new rules provide additional avenues for water providers to secure the necessary determinations while allowing land without existing ones to facilitate the construction of affordable housing in Pinal County.

11142 GARVEY AVENUE • P.O. BOX 6010 • EL MONTE, CALIFORNIA 91734-2010 • (626) 448.6183 • Fax (626) 448-5530

We, as a community, can no longer rely on a groundwater-only solution. As time progresses, housing becomes less affordable, and each delay in investing in sustainable water supplies further exacerbates the issue. The new rules present a reasonable and forward-thinking path to continue our community's development.

Thank you for your attention to this critical matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and responsive to our communities' needs. I look forward to your support in approving these crucial new rules.

Very truly yours,

Robert W. Nicholson
Vice President

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: ADAWS

Simon Larscheidt <simon.larscheidt@azdoa.gov> Wed, Oct 23, 2024 at 1:51 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Patrick Kilcullen <pjkilc8@gmail.com>
Date: Wednesday, October 23, 2024 at 6:47:09 AM UTC-7
Subject: ADAWS
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

I am pleased to read that new action is being taken with regard to our water supply here in Pinal County. I am of the understanding that new housing construction in Pinal County labeled "Build to Rent" is exempt from the 100 year water supply rule. You have to wonder if there will be enough ground water to support all this new Build to Rent construction, especially under our current drought conditions.
I would hope and strongly suggest the ADWR will eliminate this free-pass to developments labeled Build to Rent.
Patrick Kilcullen
Arizona City

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Assured water supply

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:30 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Robert Fitz <robertfitz1960@gmail.com>
Date: Thursday, October 24, 2024 at 8:56:24 AM UTC-7
Subject: Assured water supply
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

I am in support of an Assured Water Supply. I live in Casa Grande and want our residents to have enough water for our future development.

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:35 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Ken Owens <hilifedude72@gmail.com>
Date: Wednesday, October 23, 2024 at 8:26:43 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

October 23, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

Jenna Bentley, Council Member (at-large)

John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair, Council Members, and Members of the Governor's Regulatory Review Council,

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the

adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Ken Owens

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:35 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Ron Arieli <ron@motorcycletraining.com>
Date: Wednesday, October 23, 2024 at 8:29:21 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 23, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

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Sincerely,

Ron

Ron Arieli
President | RiderCoach | Total Control Instructor
TEAM Arizona MotorcyclistTraining Centers
Mobile:480.236.2997
Office:480-998-9888
ron@motorcycletraining.com
https://www.motorcycletraining.com
TEAM Arizona YouTube https://www.youtube.com/user/TeamArizona1 TEAM Arizona Facebook https://www.facebook.com/TEAMArizona/
TEAM Arizona Instagram https://www.instagram.com/team.arizona/
TEAM Arizona Twitter https://twitter.com/TEAMArizonaMC

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Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:36 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Jack Roman <jack@tuffwriter.com>
Date: Thursday, October 24, 2024 at 8:25:31 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>, info@podiumclub.com <info@podiumclub.com>

To:

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Special Attention:

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

Jenna Bentley, Council Member (at-large)

John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

Dear Members,

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Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Thank You,
-Jack Roman
TuffWriter MFG LLC: Chief Pen Clicker Emeritus | email: jack@tuffwriter.com

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:37 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Scot Dietz <scot@3blindmiceusa.com>
Date: Thursday, October 24, 2024 at 9:29:56 AM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 24, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)

Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair Jessica Klein and Members of the Governor's Regulatory Review Council,

I am writing to express my strong support for the ADAWS and Commingling rules package submitted by the Arizona Department of Water Resources (ADWR) on October 7th, 2024. I appreciate the Council's dedication to creating balanced regulations that serve Arizona's citizens and businesses while ensuring sustainable water management practices.

The ADAWS option provides a critical alternative method for securing an assured water supply determination, which will be essential for economic growth in areas like Pinal County. These new rules represent a meaningful step forward, offering a much-needed solution to the current limitations on groundwater supplies. In particular, this alternative will enable land without existing water supply determinations to be developed, allowing for the construction of affordable housing and other key infrastructure.

Given the urgent need for new housing in our region, and the environmental challenges we face, it is imperative that we adopt this new approach to water management. The proposed rules package addresses these needs, promoting responsible development while safeguarding Arizona's water resources.

Thank you for your attention to this matter, and I urge the Council to approve the ADAWS and Commingling rules package.

Sincerely,
Scot Dietz

Have a Blessed Day,

Scot Dietz | Head Cheese / CEO
3 Blind Mice Window Coverings, Inc.

7960 Silverton Ave. •#127 •San Diego, CA 92126

Direct: 858-452-6102 Mobile: 619.846.1234

FAX: 858-452-6101 | WEB: 3blindmiceusa.com

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WINDOW COVERINGS

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Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:37 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: kjbrink1@frontier.com <kjbrink1@frontier.com>
Date: Thursday, October 24, 2024 at 11:26:18 AM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

October 24, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Mark A. Sullivan

Kelly J. Sullivan

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:37 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Jeff Woodbury <woodburyjeff19@gmail.com>
Date: Thursday, October 24, 2024 at 11:27:36 AM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

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Sincerely, Jeff Woodbury

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:37 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Alvin Hamilton <alham1@aol.com>
Date: Thursday, October 24, 2024 at 2:13:51 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

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Sincerely,
Alvin Hamilton

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:38 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: chris corso <corsoster@gmail.com>
Date: Thursday, October 24, 2024 at 3:15:08 PM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club <info@podiumclub.com>

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

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Sincerely,

Chris Corso

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:38 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Hurley Hatch <hurley@proautosports.com>
Date: Friday, October 25, 2024 at 5:28:48 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: info@podiumclub.com <info@podiumclub.com>

October 24, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

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Hurley Hatch

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

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1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:38 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Hurley Hatch ProAutoSports <hurley@proautosports.com>
Date: Friday, October 25, 2024 at 5:42:34 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club <info@podiumclub.com>

October 24, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Jessica Klein, Chair

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Hurley Hatch

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:39 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Elliott Freireich <gutenberg918@gmail.com>
Date: Friday, October 25, 2024 at 9:47:25 AM UTC-7
Subject: RE: Comments pertaining to ADAWS and Commingling Rules (file number R24- 156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair

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Sincerely,

Elliott Freireich

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:33 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Steve Zurga <stevezurga@yahoo.com>
Date: Thursday, October 24, 2024 at 7:47:21 PM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24-156)
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club Admin <info@podiumclub.com>

October 23, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
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Sincerely,

Steve Zurga
Tempe, AZ

Sent from my iPhone

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:35 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Jeff Kriner <jbkriner@hotmail.com>
Date: Wednesday, October 23, 2024 at 8:38:59 PM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club Member Services <info@podiumclub.com>

October 23, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

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Sincerely,

Jeffrey Kriner

102 E Linger Ln

Phoenix, AZ 85020

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

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1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:35 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Julie Woodbury <julswoodbury@gmail.com>
Date: Thursday, October 24, 2024 at 6:10:58 AM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club Team <info@podiumclub.com>

October 23, 2024

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I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions.

I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Julie Woodbury
julswoodbury@gmail.com

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:36 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: pjmcgrew@frontier.com <pjmcgrew@frontier.com>
Date: Thursday, October 24, 2024 at 6:28:00 AM UTC-7
Subject: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podiumclub Info <info@podiumclub.com>

October 24, 2024

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

Jenna Bentley, Council Member (at-large)

John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

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Sincerely,

Pat McGrew

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: FW: ADAWS

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:29 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: tscully@reagan.com <tscully@reagan.com>
Date: Thursday, October 24, 2024 at 8:11:56 AM UTC-7
Subject: FW: ADAWS
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club <info@podiumclub.com>

-----Original Message-----
From: "tscully@reagan.com" <tscully@reagan.com>
Sent: Thursday, October 24, 2024 10:08am
To: grrcomments@azdoa.gov
Cc: "Podium Club" <info@podiumclub.com>
Subject: ADAWS

October 23, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

Jenna Bentley, Council Member (at-large)

John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

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Sincerely,

Tim Scully
8657 N Arnold Palmer
Tucson Az 85742
520-433-1747

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: WATER SUPPORT LETTER

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:31 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: John Meyers <JWMeyers@outlook.com>
Date: Thursday, October 24, 2024 at 1:01:35 PM UTC-7
Subject: WATER SUPPORT LETTER
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Podium Club Team <info@podiumclub.com>

October 23, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, Council Member

Jeff Wilmer, Council Member

Jenna Bentley, Council Member (at-large)

John Sundt, Council Member

Rana Lashgari, Council Member (at-large)

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Sincerely,

John W Meyers

MEMBER – Podium Club, Casa Grande AZ

Resident

42596 W Santa Fe Street

Maricopa, AZ 85138

BUCKEYE, AZ
CITY MANAGER'S OFFICE

October 23, 2024

SENT VIA EMAIL

Ms. Jessica Klein
ADOA General Counsel and Chair
Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, Arizona 85007

RE: Alternative Designation of Assured Water Supply

Dear Chair Klein and Members of the Governor's Regulatory Review Council:

The City of Buckeye spans a planning area of 640 square miles, making it the largest city by land area in Arizona. Over the past five years, Buckeye has been one of the fastest-growing cities in the United States. With a current population of approximately 115,000 residents, our city is projected to reach nearly 300,000 residents by 2040 and over 1.1 million residents at full buildout. Buckeye leads the nation with the highest percentage of homeowners, highlighting our critical role in meeting regional demands for affordable housing. Moreover, Buckeye is essential to the state's economic development and job creation efforts, with more than 50 million square feet of commercial projects currently in the development pipeline.

Buckeye's size and economic potential underscore the urgent need for collaboration between city and state leaders to develop practical solutions that address our future water needs while safeguarding the sustainability and health of the aquifer. While we are committed to working collaboratively towards a regulatory or legislative solution, the City of Buckeye has significant concerns with the proposed Alternative Designation of Assured Water Supply (ADAWS) which are outlined below.

2023 Phoenix Active Management Area Groundwater Model
The ADAWS rules are predicated solely on findings from the 2023 Phoenix Active Management Area (AMA) Groundwater Model (2023 Phoenix Model), which projects a four percent "unmet demand" within the Phoenix AMA. However, it is crucial there be a shared consensus regarding the model's efficacy before creating a regulatory framework based exclusively on its findings.

The 2023 Phoenix Model was released without any input from community stakeholders and fails to incorporate several fundamental and accepted water management practices, including: (1) demand calculations based on current water efficiency standards and conservation measures; (2) replenishment requirements for residential uses; and (3) the beneficial use of effluent by service providers. These omissions are significant.

Additionally, the "unmet demand" is determined by the exceedance of a 1,000-foot depth limit at projected groundwater well locations. Simply redistributing these well locations to accurately reflect pumping could

resolve much of the projected "unmet demand." Reputable modeling conducted by Matrix New World has been presented to the Arizona Department of Water Resources (Department), demonstrating these well location adjustments would eliminate the projected shortfall. However, the Department has declined to make any modifications to the 2023 Phoenix Model.

Even if the Department remains confident some level of "unmet demand" exists, it is reasonable to assume the deficit would be significantly reduced, warranting alternative regulatory solutions that impose a lesser burden and cost.

25 Percent Groundwater Offset Requirement

The City of Buckeye strongly opposes the 25 percent groundwater offset requirement for each new alternative water supply included in R12-15-710. This requirement places a substantial financial burden on the city and its residents. For instance, our pending purchase of Harquahala water would cost taxpayers more than $20 million to offset existing groundwater pumping. The groundwater volume included in the ADAWS is primarily from Certificates of Assured Water Supply (CAWS), which are already required to be replenished. Therefore, the offset is effectively a double fee on ratepayers who are already paying for groundwater replenishment through property taxes to the Central Arizona Groundwater District.

Moreover, the 25 percent offset also applies to effluent generated from new alternative water supplies. As a result, this water could be subject to multiple layers of the offset rule each time it is treated, compounding the actual offset and cost far beyond 25 percent. Such an impact would place a significantly greater financial burden on Buckeye residents than on those of other cities. Additionally, by the Department's own admission, the complexity of the rule makes it challenging to evaluate the quantitative impacts on water users. It is unreasonable to ask the city to participate in ADAWS if we cannot clearly and concisely explain its impacts to the public.

The Department has not provided a study or justification for selecting the 25 percent offset. Its response in the GRRC rulemaking package notes that the 25 percent offset is less burdensome than the initially proposed 30 percent. However, without a foundation for the original percentage, it is reasonable to believe the intended benefits could similarly be achieved with an even lower offset percentage of 20, 15, or even 10 percent. The proposed offset represents a considerable cost to ratepayers, and without detailed justification, the proposed 25 percent offset is arbitrary and capricious.

If it is determined that an offset requirement is necessary, it should be exercised equitably across the entire Phoenix AMA to all designations that contain groundwater allowances. It is not fair or reasonable to ask Buckeye or other ADAWS cities to solely bear the responsibility for reducing "unmet demand" while other traditionally designated providers, also using groundwater, are offered expedited review using the previous groundwater model.

Agriculture-to-Urban Conversion Program

While the agriculture-to-urban conversion program (ag-to-urban) is not explicitly included in the proposed rules, Buckeye has made it clear the ADAWS framework, as proposed, cannot succeed without this program. Converting water-intensive agricultural land to residential use is critical for Buckeye's future growth. This conversion would provide the necessary resources and certainty for ADAWS while also offering significant long-term benefits for the aquifer, saving over 100,000 acre-feet of water annually in Buckeye and 1.57 million acre-feet across the Phoenix AMA over 100-years.

Despite the inextricable link between ADAWS and ag-to-urban, the ADAWS rules fail to create a mechanism for incorporating groundwater volumes from these conversions into the designation. In fact, rule R12-15-710 (H) states the "Director shall not include any additional sources of groundwater withdrawn from the AMA…" in the ADAWS designation. Given the enormous significance of this program, the Council should ask the Department to pursue a cohesive regulatory or legislative solution for ag-to-urban.

Conclusion

A common refrain among city leaders is that "we are in the forever business." This is especially true when it comes to water. Buckeye is dedicated to meticulous planning, aquifer protection, and ensuring our residents are guaranteed the consumer protection provided by a 100-year water supply. The city is continuously engaged in efforts to secure additional alternative water supplies, and we are committed to building some of the most water-efficient homes in the United States in collaboration with our development partners.

Implementing innovative water resource solutions is essential—not just for Buckeye, but for the economic health and growth of the entire region and state. This decision is too important to get wrong and should be weighed carefully. We can and must develop water policies that address the unique challenges facing Arizona, the Phoenix AMA, and the Buckeye community. The ADAWS program, as currently proposed, does not meet this standard.

Buckeye remains committed to working with the Department to ensure ADAWS is successful, not just for private water companies, but for the city as well. We have consistently shared our feedback and concerns regarding the proposed rules, and we hope to continue collaborating toward a balanced solution. As a key driver of Arizona's economy, Buckeye plays a vital role in creating new high-tech jobs and providing affordable housing that benefits the entire state.

Thank you for your consideration, and please let us know if we can provide any additional information.

Sincerely,

Dan Cotterman
Buckeye City Manager

October 22, 2024

Jessica Klein
ADOA General Counsel and Chair
Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Re: Proposed DWR Water Rules

Dear Chairperson Klein,

I represent the Home Builders Association of Central Arizona ("HBACA" or "Association") and write concerning the Department of Water Resource's ("DWR's" or "Department's") August 23, 2024 proposed rules ("Proposed Rules") regarding designations of assured water supply. I am writing to request that the Governor's Regulatory Review Council ("Council") reject the Department's Proposed Rules

As explained below, the Association believes that the Proposed Rules suffer from significant substantive and procedural flaws. It therefore respectfully requests that the Council reject the Proposed Rules if they remain in their present from. The Association wishes to highlight six key deficiencies in the Proposed Rules by this letter.

First, the Proposed Rules do not comply with the statute they purport to implement. In particular, the Rules' proposed modifications to the requirements for obtaining designations of adequate water supplies for new construction projects is unlawful.

The proposed rules provide that "[e]xisting groundwater pumping is grandfathered into the" existing system. 30 A.A.R. 2,620, 2,625 (Aug. 23, 2024). But for obtaining new designations of adequate water supplies, a "portion of the new supplies (25%)" is excluded. *Id.*

As a practical matter, the Proposed Rules would impose a de facto water tax on new construction that obtains designations under the Rules. Existing groundwater users, who are explicitly grandfathered into the prior system, need only demonstrate adequate water for *their* uses. But for *new* users, such as new housing developments, the new supplies of water that they bring to the table would be reduced by 25%. Because of the 25% reduction, new users will have to obtain an additional 33.3% of water supplies, such that when the 25% haircut is applied, they can satisfy the Proposed Rules' standard. The Proposed Rules thus

would effectively impose a 33.3% water tax on affected builders.

This water tax is unlawful because it violates A.R.S. § 45-576, which the Proposed Rules purport to implement. That section provides in relevant part that "[f]or the purposes of this section, 'assured water supply' means … [s]ufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years." A.R.S. § 45-576(M).

The critical language here is that a developer seeking a designation of adequate water supplies is only required "to satisfy water needs of the proposed use"—*i.e.*, their own use, *not* the water uses of *others*. By forcing new users to obtain sufficient water to satisfy their needs *plus* another 33.3%, the Proposed Rules would compel new applicants not only to satisfy their *own water needs*, but a substantial portion of the water needs *of other users*. That squarely violates § 45-576(M), which only requires applicants to obtain water to satisfy their own uses for 100 years.

Nor can the Proposed Rules' water tax be justified as requiring new applicants to account for their share of the projected deficits in future water supplies. The Proposed Rules rely on a 2023 Phoenix model that estimated a future 4% deficit/shortfall in water supplies. The proposed 33.3% water tax wildly exceeds this 4% projection and is thus arbitrary and excessive.

The upshot is that the Proposed Rules impose a de facto 33.3% water tax on new uses, which would effectively function as an intentionally redistributive water tax. Existing users are explicitly grandfathered into the existing system, and thus need not come up with new supplies themselves. Their contribution to addressing the projected water deficit is thus *zero*. The Proposed Rules thus essentially balance the projected water deficit purely on the backs of *new* users.

A.R.S. § 45-576(M) does not permit this sort of redistributionist scheme. It only permits the Department to require that applicants obtain sufficient water for *their* "proposed use"—not the uses of *others*. To the extent that the Department wishes to transfer the burden of water uses by existing uses to new users, it would require new authorization from the Legislature. A.R.S. § 45-576 not only fails to provide authorization for such redistribution, it *affirmatively prohibits* it.

Second, and relatedly, the Proposed Rules fail to account for the requirements applicable for licensing decisions under A.R.S. § 41-1030. The Proposed Rules admit that their new standard "is a license." 30 A.A.R. at 2,628, 26,38. Under § 41-1030, agencies cannot impose licensing requirements "that [are] not *specifically authorized* by statute." (emphasis added). But here § 45-576(M) specifically *precludes* redistributionist water mandates, rather than specifically *authorizing* it.

Third, the Proposed Rules' estimates that the resulting costs are "expected to be minimal" 30 A.A.R. at 2,627; 2,637, is gravely flawed—indeed, indefensible. So too is the Department's refusal to attempt to quantify those costs.

As the Department is undoubtedly aware, obtaining new supplies of water in Arizona is hardly costless. Arizona is not Florida, which in many regions is teeming with virtually unlimited water sources. It is rather a desert state, in which water is scarce. That is, after all, the reason for Arizona's quite-stringent 100-year requirement of § 45-576. The suggestion that coming up with an additional 33.3% in water supplies beyond what the proposed applicants will actually use themselves would have only "minimal" cost is, on its face, absurd.

The Department's "minimal" cost estimate appears to rest on the premise that the Proposed Rules offer a new "option" to developers that did not previously exist. That premise fails on multiple levels. As a practical matter, the Proposed Rules represent the *only* manner in which the 100-year, adequate-water supply mandate of A.R.S. § 45-576 could be satisfied for new home construction in many areas of Maricopa and Pinal Counties.

In any event, the simple and inescapable fact is this: if applicants elect to obtain designations of adequate water supplies under the Proposed Rules' standards—*i.e.*, by paying the 33.3% water tax—they will incur *significant costs*. But the Proposed Rules make no effort to quantify or analyze those costs, instead merely hand-waiving them off as "minimal." So if applicants use the Proposed Rules, there will be significant costs that the Rules did not analyze. That renders the Proposed Rules unlawful.

Ultimately, the Department's pretense that it may (1) impose a 33.3% water tax in the Proposed Rules and then (2) refuse to analyze what the costs imposed by that water tax will be, is indefensible. The Department is *required* to analyze what the costs of the Proposed Rules will be. *See*, *e.g.*, A.R.S. § 41-1055. A water tax that imposes a new regulatory burden on the regulated parties is one such cost that *must* be analyzed. The Proposed Rules' failure to do so renders them unlawful.

Fourth, as the Association has explained previously, the Department's reliance on the 2023 Phoenix Model is flawed. Adjusting that model with reasonable placement of wells eliminates the anticipated 4% water deficit.

Fifth, the Proposed Rules' promulgation is procedurally deficient under the Department's proposed schedule. Here, the Department submitted the Proposed Rules to the Council on October 7, and has requested consideration at its November 5 meeting—*i.e.*, only 29 days later. But A.R.S. § 41-1052(I) requires a minimum of 30 days for public commenting before the Council may consider a

proposed rule. The Department's proposed schedule is thus unlawful.

Sixth, the Proposed Rules violate A.R.S. § 41-1052. Notably, § 41-1052 (D)(8) requires that a preamble to a rule shall "disclose[] a reference to any study relevant to the rule that the agency reviewed" and whether the agency "did or did not rely" on it. But although the Proposed Rules plainly rely on the 2019 Pinal Model and 2023 Phoenix Model—which are *studies* analyzing projected water uses—both Rules' preambles stated "None" for relevant studies. *See* 30 A.A.R. at 2,627, 2,637. That non-disclosure violates A.R.S. § 41-1052(D).

In addition, because the Proposed Rules rely on those 2019 and 2023 studies, and "a person [has] submit[ted] an analysis to the council questioning whether the rule is based on valid scientific or reliable principles or methods"—including the Association's comments on the Proposed Rules, this Council "*shall not approve the rule* unless the council determines that the rule is based on valid scientific or reliable principles or methods that are specific and not of a general nature." A.R.S. § 41-1052(G) (emphasis added). The Department has not yet provided the Council with *any* basis for making such a determination.

Please feel free to contact me if you have any questions or would like to discuss any of this further. I can be reached at (480) 773-1411 and agould@holtzmanvogel.com.

Respectfully,

/s/ Andrew Gould
Andrew Gould

cc: Thomas Buschatzke, Director, Department of Water Resources

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: ADAWS and Comingling Rule Concerns

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:33 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Scott Moore <scott.moore@ashtonwoods.com>
Date: Thursday, October 24, 2024 at 2:39:33 PM UTC-7
Subject: ADAWS and Comingling Rule Concerns
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Hello ,

Even though the current freeze on groundwater usage is significantly reducing desperately needed land supply, which is currently driving up land prices, and further reducing future affordability, we are very concerned about the current ADAWS and Comingling rules as part of the solution. Homebuilding and homeowners already replenish all of their groundwater use and protect our future supplies. Requiring landowners, home builders, and therefore future homeowners to bear the significant burden of water usage for all other land uses is not a good solution. Adding the 33% ADAWS and 30% Comingling water tax to the homeowners real water use is further deteriorating affordability and the dream of homeownership. Letting all the other industries not be responsible for their water use and not having them participate in the water solution to just force it on future homeowners is not good state leadership or rulings. We respectfully ask that this water tax not be approved.

Thank you for your time and consideration. Have a good day.

Scott

ASHTON WOODS.
2023 BUILDER OF THE YEAR
Builder

Scott Moore
Division President
Ashton Woods - Corporate HQ Division

8655 E Via de Ventura | Scottsdale, Arizona 85258
D 480 515 9955

scott.moore@ashtonwoods.com | **ashtonwoods.com**

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Letter of Opposition - Proposed DWR Water Rules

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:39 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Ryan Benscoter <ryanb@camelothomes.com>
Date: Friday, October 25, 2024 at 10:34:11 AM UTC-7
Subject: Letter of Opposition - Proposed DWR Water Rules
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Dear Governor's Regulatory Review Council (GRRC),

I am writing today to express my opposition to the proposed rule changes related to designations of assured water supply. I (as a representative of Camelot Homes) feel these proposed rule changes impose unnecessary conditions and financial burdens on the homebuilding industry and requests that the Council summarily reject these changes.

The homebuilding industry has replenished and protected its groundwater use since 1995. We do not intend to change this in the future and respectively just want to continue building homes without all of the unnecessary burdens proposed by these changes. As you are all aware, Arizona has a severe housing shortage (as large as any State in the County) and adding a "water tax" to future homeowners will only hurt this shortage in the near and the long term. Asking future homeowners to pay more than their fair share will just continue to put new home ownership out of reach for more and more hard-working families. Assigning a 33% "water tax" to specifically the homebuilding industry (and no other landowner / users) is frankly unfair and will just continue the same water problems for years to come. Why not impose this same tax to the multi-family / industrial / office / or retail sectors of the development industry? Or better yet, what about future semi-conductor plant(s)?

I have seen no data or information that shows that these new rules will do any good in fixing our water problems. This 33% water tax on future homeowners literally makes no sense and has no justification. To put it bluntly, these rules are illegal and state statute clearly outlines that our housing projects should pay 100% and no more than 100% of our share.

I appreciate your taking the time to read this email and hopefully will applaud your actions when you reject these water rule changes.

Thank you for the consideration.

Ryan

Ryan T. Benscoter

Land Acquisition & Entitlement

CAMELOT HOMES

6607 N Scottsdale Rd, Suite H-100
Scottsdale, AZ 85250

+P 480 367 4314

+C 602 882 0455

camelothomes.com
ROC# B-067408

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Objection to DWR water proposals

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:30 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Don Barrineau <Don.Barrineau@mattamycorp.com>
Date: Thursday, October 24, 2024 at 11:20:36 AM UTC-7
Subject: Objection to DWR water proposals
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

GRRC Members,

I'm writing today to express my strong opposition to the proposed ADAWS and Commingling rules. Requiring us to obtain 133% of the water needed in the ADAWS proposal, and 130% of the water needed in the other, is an undue burden, and amounts to a thinly cloaked tax. Out of all industries and different types of water uses granted certificates, homebuilding uses the least amount of water. Industrial, retail, office, multi-family, agricultural all use more water than homebuilding, and yet are sailing through with approvals and not being asked to carry any additional burden. As an industry, we have been replenishing the groundwater aquifers in our developments since 1995. We are the only industry to do so across the entirety of the industry. Further, we have a severe affordability crisis in housing in Arizona, and this will significantly exacerbate that problem.

What is the justification for this punitive policy proposal? Will it fix the state's water problems? Are these proposed new rules legal? State statute currently requires us to bring 100% of the water needed only, which makes sense.

mattamyHOMES

Don Barrineau

Division President – Phoenix

C (480) 673-0872

Don.barrineau@mattamycorp.com

Mattamy Homes USA

Division Office: 9200 E. Pima Center Pkwy, Suite 160, Scottsdale, AZ 85258

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Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Objection to Proposed ADAWS Commingling Rules

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:39 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Tisha Ferguson <Tisha.Ferguson@mattamycorp.com>
Date: Friday, October 25, 2024 at 12:14:48 PM UTC-7
Subject: Objection to Proposed ADAWS Commingling Rules
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Dear Governor's, Regulatory Review Council,

I am writing to express my opposition to the proposed rules by the Arizona Department of Water Resources regarding the Alternative Designation of Assured Water Supply and the comingling rule. Since 1995, the home building industry has effectively replenished groundwater while addressing housing needs. With Arizona facing a housing affordability crisis, adding costs for future homeowners will only push housing out of reach for many, worsening accessibility for families.

Homebuilding uses less water than many other sectors, like agriculture and industrial, which face no similar restrictions. It's unfair to expect homeowners to subsidize water for other land uses, and the proposed 33% and 30% water taxes are unjustified and burdensome. ADWR has not shown that these rules will resolve water issues, nor have they consulted with the HBACA, raising transparency concerns.

Additionally, these rules may violate state laws requiring new projects to secure their own water supply. I urge the Council to reconsider the potential negative impacts on housing affordability and our communities.

Thank you for your attention,

mattamyHOMES

Tisha Ferguson

Vice President of Sales – Phoenix

C (623) 866-3713

Tisha.Ferguson@mattamycorp.com

Mattamy Homes USA

Division Office: 9200 E. Pima Center Pkwy, Suite 160, Scottsdale, AZ 85258

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Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Objection to Proposed ADAWS/Commingling rules

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:31 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Jeffrey Parks <Jeffrey.Parks@mattamycorp.com>
Date: Thursday, October 24, 2024 at 11:57:29 AM UTC-7
Subject: Objection to Proposed ADAWS/Commingling rules
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

GRRC Members,

I'm writing today to express my strong opposition to the proposed Alternative Designation of Assured Water Supply rule and commingling rule.

A requirement to obtain 133% of the water needed in the ADAWS proposal, and 130% of the water needed in the commingling rule proposal, is an undue burden, and elevates the cost of housing in Arizona when home affordability is already at crisis levels. Effectively, this is an unnecessary tax, and would only worsen home affordability for hard working families.

Housing/homebuilding uses far less water than many other industries and different types of land uses, including industrial, retail, office, multi-family, and agricultural, yet those heavier uses seem to sail through with approvals and are not being asked to carry any additional burden. As an industry, homebuilding has been the only industry replenishing the groundwater aquifers in our developments for roughly 30 years. Homeowners should not be singled out to subsidize the water supplies for other users. If other land users are not responsible for their water use, Arizona's water issues may never be solved.

Growth should rightly pay its fair share, but only that. State statue fairly requires that new housing projects bring 100%, not more, which calls into question the legality of the proposals.

Jeff

mattamyHOMES

Jeffrey Parks

Vice President of Finance – Phoenix Division

O (480) 291-8103 **C** (407) 551-9939

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Mattamy Homes USA

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Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: OPPOSE DWR'S ADAWS AND COMMINGLING RULES

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Fri, Oct 25, 2024 at 3:31 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Matthew Arneson <Matthew.Arneson@mattamycorp.com>
Date: Thursday, October 24, 2024 at 12:22:44 PM UTC-7
Subject: OPPOSE DWR'S ADAWS AND COMMINGLING RULES
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

GRRC Members,

I am writing today to state my opposition to the proposed commingling rules within ADAWS. The new language is adding an undue burden with extra steps and hidden taxes due to the increased requirement for water, requiring 133% in ADAWS areas and 130% in other areas. Arizona has a severe housing affordability crisis and water is already expensive, adding the extra requirements will add to the struggles of our hard-working families. Homeowners already carry the burden, unlike industrial, retain, office, multi-family and agricultural. These new rules are adding on top of the current burden while housing using the least amount of water.

Homebuilding has been doing its part in replenishing ground water since 1995 and pay for 100% of water, what justification is there to saddle them with more? Is it legal? We want to keep building homes, protecting our groundwater, and not overburden our homeowners with extra costs and regulation.

Thank you,

mattamyHOMES

PHOENIX BUSINESS JOURNAL

BPtW

2022 BEST PLACES TO WORK

MATTHEW ARNESON

VP Land – Phoenix Division

M (602) 448-3380 **O** (480) 291-8143

Matthew.Arneson@mattamycorp.com

Mattamy Homes USA

Division Office: 9200 E. Pima Center Pkwy, Suite 160, Scottsdale, AZ 85258

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GRRC - ADOA <grrc@azdoa.gov>

Governor's Regulatory Review Council | Contact Submission

1 message

Governor's Regulatory Review Council <noreply.grrc@azdoa.gov> Wed, Oct 23, 2024 at 12:00 PM
Reply-To: noreply.grrc@azdoa.gov
To: grrc@azdoa.gov

Caution: The following message contains information provided by an anonymous user through an online form. Please treat the below message with caution, avoid clicking links, downloading attachments, or replying with personal information.

ARIZONA

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Name: LA Fierro
Email: ff.farmingaz@gmail.com
Phone: (602) 432-0163

I am submitting a comment re: AZWA 100 year certificate via "alternate" sources.
1) we have not been provided any studies that prove this works
2) Water, and the lack thereof is a HUGE issue for current residents of AZ. Isn't putting our aquifers at risk for more population against Pinal County development rules, AND I would think, State and WHO rules
3) Ruling by NOVEMBER 5TH???? Really? As the above questions do not seem to have been addressed, why the RUSH? Unless science and all common sense AND "water is a right" rules will prove this to be a DANGEROUS proposition.

Thank You

Governor's Regulatory Review Council

100 N. 15th Avenue Suite 302

Phoenix, AZ 85007

Phone: (602) 542-2058

October 28, 2024

Arizona Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

Re: Comments on the Proposed Alternative Designation of Assured Water Supply Rules

Dear Chairperson Klein and members of the Governor's Regulatory Review Council,

Please accept these comments relating to the proposed Alternative Designation of Assured Water Supply Rules. While we commend the Arizona Department of Water Resources' (ADWR) efforts to address the moratorium put into place by Governor Hobbs on new determinations of assured water supply in the Phoenix area, we have serous concerns about this proposal.

Firstly, the underlying reasons behind the need for an *Alternative* Designation of Assured Water Supply warrant serious scientific study and scrutiny. The 2023 Pheonix AMA groundwater model the estimates a 4% deficit in groundwater supplies in 100 years makes broad assumptions about points of groundwater withdrawal, existing and future water supplies, and future demand, which are proving to be far too simplistic and serve to overstate groundwater withdrawal.

Secondly, the ADAWS program places a 33% tax on homeowners in areas served by the ADAWS program. This tax is a subsidy, paid for by homeowners, to ensure water is in place for other industries unaffected by ADAWS rules, such as commercial and industrial users. This 33% tax does not pass the "rough proportionality" test pertaining to the 'tax' and the impact of the development on the community. Put simply, Arizona homeowners cannot and should not bear the burden of funding water supplies for corporate apartment interests, large scale industrial users, corporate commercial conglomerates, and the like. Besides being politically radioactive, this fee structure is likely to be found illegal if enacted.

Finally, as you all know, Arizona has a well-documented and severe housing affordability crisis. The single largest reason for this crisis is a significant shortage of available housing within our state. The fastest way to solve this crisis is to increase supply through the responsible construction of new homes.

This water moratorium is becoming a key contributor to the affordability crises in the Phoenix metropolitan area. A crisis that is only growing and putting homeownership out of reach for increasing segments of our population. I encourage the Council to send this ADAWS rulemaking package back to ADWR and ask them to focus on finding ways to fund this program in a manner that asks hardworking Arizona homeowners to pay only for their fair share of water resources and no more.

Warm Regards,

Jeremy Ramsdell
VP Land Acquisition and Development
Ashton Woods Homes - Phoenix

Gmail

Levi Bevis <levi.bevis@azdoa.gov>

Concerns on ADWR's Proposed ADAWS and Comingling Rules

'Jaron Engel' via GRRC Comments - ADOA <grrccomments@azdoa.gov> Fri, Oct 25, 2024 at 4:09 PM
Reply-To: Jaron Engel <jaron.engel@ashtonwoods.com>
To: "grrccomments@azdoa.gov" <grrccomments@azdoa.gov>

Members of the Governor's Regulatory Review Council,

I am writing to share my apprehension about the Arizona Department of Water Resources' (ADWR) proposed ADAWS and comingling rules. While water conservation and management are critical for Arizona's future, these specific regulations seem to place excessive burdens on new homeowners, making housing less affordable while not directly addressing the root causes of our water challenges.

The ADAWS rule aims to streamline water supply assurances, which is vital for areas like Buckeye and Queen Creek. However, its 133% water purchase requirement is an added "tax" on homeowners, making them responsible for shouldering additional costs that should be equitably shared across all water users. The comingling rule has a similar approach, requiring 130% of the water needed for housing developments outside designated areas. This is an unfair expense for future homeowners, who will essentially be subsidizing other water uses rather than just supporting their communities.

Arizona's housing affordability is already stretched, and placing these extra requirements on new homeowners only intensifies the problem. These rules also raise questions about whether they comply with state laws, which specify that new developments need only secure 100% of their water requirements. Placing the burden for water supply beyond this on individual homeowners does not seem like a fair solution, and there's little evidence that these rules will meaningfully solve our water issues.

I urge you to reconsider supporting these rules and to seek solutions that fairly distribute water responsibilities without creating further barriers to homeownership. We all want a sustainable water future for Arizona, but not at the cost of forcing hard-working families out of the housing market.

Thank you for considering these concerns.

Sincerely,

Jaron Engel
VP of Purchasing & Product Development
Ashton Woods - Phoenix Division

8655 E. Via De Ventura Suite F-250 | Scottsdale, AZ 85258
D 480 772 9650
jaron.engel@ashtonwoods.com | ashtonwoods.com

Gmail

Levi Bevis <levi.bevis@azdoa.gov>

ADAWS AND COMMINGLING RULES - OPPOSED!

'Michelle Gregorec' via GRRC Comments - ADOA <grrccomments@azdoa.gov> Mon, Oct 28, 2024 at 3:32 PM
Reply-To: Michelle Gregorec <Michelle.Gregorec@pultegroup.com>
To: "GRRCCOMMENTS@AZDOA.GOV" <GRRCCOMMENTS@azdoa.gov>
Cc: Michelle Gregorec <Michelle.Gregorec@pultegroup.com>

Good afternoon,

I am the AZ Division President at PulteGroup and am writing to share my concerns regarding the ADAWS and commingling rules you will be reviewing tomorrow, 10/29/2024.

The new rules as drafted will require an incremental water tax of 30 – 33% that will be passed on to our homebuyers, thereby exacerbating the housing shortage and severe affordability crisis we continue to face here in the state of AZ. A tax of this magnitude will continue to put housing out of reach for even more hard-working families sending us backwards from the minimal progress we have made to date. We strongly believe that burdening homebuilders and requiring homeowners to subsidize the water supplies for other users will be detrimental to the state economy and if these rules are approved and adopted, AZ will never fix its water problems.

Current state statute requires that new housing projects bring 100% of the water needed, which we have been doing since 1995. As an industry, we have built over 10's of thousands of homes over the last 30 years while protecting our groundwater aquifers and are respectfully requesting the ability to keep doing so. Further, while ADWR is aware of the concerns of the homebuilding industry, they have been unwilling to meet with the Home Builders Association of Central Arizona to discuss them and work towards resolution.

The rules as currently proposed are illegal. Growth should pay for its share of growth, but not pay for others.

Thank you for your consideration.

Sincerely,

Michelle Gregorec

PULTEGROUP

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Michelle Gregorec

Division President : Arizona Division

Michelle.Gregorec@pultegroup.com

Phone: 480-391-6190

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Gmail

Levi Bevis <levi.bevis@azdoa.gov>

ADAWS

Craig Scott <craigdscott@gmail.com> Sat, Oct 26, 2024 at 4:42 PM
To: grrccomments@azdoa.gov

I strongly support this proposed legislation to Arizona's groundwater law. ADAWS is a much needed innovation that would protect our groundwater and also enable people to buy affordable housing where there are jobs.
Thank you
Sent from my iPhone

Gmail

Levi Bevis <levi.bevis@azdoa.gov>

Comments on new rules governing 100 year water supply

Rebecca Heisler <rebheisler@gmail.com> Sun, Oct 27, 2024 at 2:15 PM
To: grrccomments@azdoa.gov

I think this is a really BAD idea. Arizona fails to address the water supply issue reasponsibly. The major problem is that the state, SRP, water suppliers, whoever is in charge refuses to place restrictions on water usage. There is a culture in AZ that people should be able to do what they want with water, when they want, regardless of the supply. I am appalled everytime I see a fountain or water flowing over rocks or what have you at the entrance of a subdivision. This is giving people who move here and people who live here a false idea about water in the desert. The key word here is that we live in a desert! Before any new rules are applied that will allow people to continue their wasteful behavior with water, AZ needs to start a program of CONSERVATION. Water restrictions need to be implemented and applied. Lush vegetation is NOT part of a water conservation plan or responsible use of water.

In addition, with climate change, Central and Southern Arizona will be uninhabitable in the near future. Instead of vying for more industry, development, and commercial enterprise, AZ really needs to think about it's future based on what the climate will be doing. Promoting AZ as a great place to visit, but not necessarily to live should be the beckoning mantra.

The desert is a beautiful thing and AZ is destroying the Sonoran desert at an alarming rate. In addition to conserving water, we need to conserve the land too. Protecting the Sonoran desert should be a priority with the State. It does not appear that this is the case.

I would like to see Arizona adopt water conservation measures as a first step before applying any new rules.

Thank You,

Rebecca Heisler

Gmail

Levi Bevis <levi.bevis@azdoa.gov>

GRRC proposal

Frank Metzger <frankm85242@gmail.com> Sat, Oct 26, 2024 at 7:42 AM
To: grrccomments@azdoa.gov

I
We have lived in Pinal county for nearly 40 years. We are surprised that you aren't using effluent already to recharge ground water. We fully support recharging with effluent, but more relatively unchecked growth has been a common practice in Arizona for many years, and there has to be a limit to how many people we should facilitate moving to this state. Once the water crisis is really fixed with desalination or redistribution of water from other parts of the country or other methods, maybe we can change the long standing policy of requiring 100 years of water. Enough is enough. We are opposed to the proposal that eliminates the rule that modifies the prior accepted policy of requiring 100 years of "guaranteed" water for new housing. Recharging ground water is a great idea, but this shouldn't be used to allow more unfettered growth in this already over populated part of the state.

Frank and Meredith Metzger
PO Box 91
Queen Creek, Arizona 85142

Gmail

Levi Bevis <levi.bevis@azdoa.gov>

OPPOSE: ADAWS & Commingling Rules

'Greg Abrams' via GRRC Comments - ADOA <grrccomments@azdoa.gov> Mon, Oct 28, 2024 at 10:50 AM
Reply-To: Greg Abrams <Greg.Abrams@pultegroup.com>
To: "grrccomments@azdoa.gov" <grrccomments@azdoa.gov>

Good morning, I am writing to express my concern with the ADAWS rules as they are currently drafted. Homebuilders have replenished its groundwater use since 1995. We have supported the protection that the CAGRD program provides to the aquifer for nearly 30 years - we just want to continue building homes and supporting this program like we have been. Arizona has a severe housing affordability crisis and placing a 30% -33% water tax on homeowners will only exacerbate this issue. Arizona homeowners should not be required to subsidize the water supply for others. The Arizona Department of Water Resources has not been able to confirm that these proposed rules will fix the groundwater problem and has been unwilling to meet with Home Builders Association of Central Arizona. The proposed rules are illegal - growth should pay for growth, but it should not pay for others.

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Greg Abrams
Arizona Division | Phoenix & Tucson
16767 Perimeter Drive | Scottsdale, Arizona 85260 | Suite 100
Work: 480-391-6078
Cell: 602-663-1173
Greg.Abrams@PulteGroup.com

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ATWELL

October 17, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Chair and Council Members - Members of the Governor's Regulatory Review Council:

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in

ATWELL

sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Respectfully,

Ted Northrop Jr, PE
Senior Vice President

ATWELL, LLC

Scottsdale, AZ

Offices: Mesa-Phoenix-Scottsdale

October 21, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide a third method for determining an assured water supply in the Phoenix and Pinal Active Management Areas. Representatives from the various business sectors also supporting the ADAWS in Pinal County are submitting letters outlining their positions. I fully support these new rules and the letters of my peers, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules provide an additional method for water providers to secure a new assured water supply determination and allow land without existing determinations the opportunity to build desperately needed, affordable housing in Pinal County. We, as a community, can no longer rely on a groundwater-only solution. Housing becomes less affordable with each day we wait to invest in sustainable water supplies. The new rules are a reasonable path forward to continue to build our communities.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Allan Dahle

Land Owner Coolidge, AZ

[YOUR USUAL CLOSING LANGUAGE]

CHANDLER
arizona
Community of Innovation

October 21, 2024

VIA EMAIL grrc@azdoa.gov
& U.S. POSTAL SERVICE

Governor's Regulatory Review Council
Arizona Department of Administration
100 North Fifteenth Avenue, Suite 302
Phoenix, AZ 85007

RE: Alternative Pathway to Designation of 100-Year Assured Water Supply (ADAWS)

Dear Members of the Governor's Regulatory Review Council:

Chandler appreciates the opportunity to comment on the proposed rulemaking to provide an alternative pathway for a Designation of Assured Water Supply (DAWS). Chandler is the fourth largest city in Arizona and has a long history of commitment to meeting the requirements for a 100-Yr Designation of Assured Water Supply. Chandler has invested billions of dollars in our water and wastewater treatment and distribution systems. These investments demonstrate our commitment to growing our community on renewable surface water supplies, rather than relying on the inexpensive groundwater supplies that are limited and once depleted will be gone forever.

When the 1980 Groundwater Management Act and the Assured Water Supply Program were developed, Chandler was one of the first communities to adopt the principles of sustainable water management and began to transition away from groundwater reliance. After acquiring significant renewable water resources, constructing two surface water treatment plants, three wastewater reclamation facilities, and six aquifer recharge facilities, Chandler is proud to prioritize sustainable aquifer management. It is imperative that the new proposed ADAWS rules continue to protect the investments that have already been made by the dozens of municipal water providers who have invested in sustainable water management and prioritizing healthy aquifers.

All municipal water providers in the Phoenix and Pinal AMAs will be impacted by the outcome of the proposed changes to the Assured Water Supply Program because we all depend on the long-term health of our aquifers. As we face an era of uncertainty on the Colorado River, protecting our aquifers has never been more important to Arizona's future

Mailing Address
Mail Stop 905
PO Box 4008
Chandler, AZ 85244-4008
85286

Public Works & Utilities Department
Environmental Resources/Water Conservation
Telephone (480) 782-3580
Fax (480) 782-3805

Location
975 East Armstrong Way
Building L
Chandler, AZ

www.chandleraz.gov

water security. The Arizona Department of Water Resources has already warned our communities that we can not continue unsustainable growth on groundwater and that they will no longer issue new assured water supply certificates that rely on groundwater. All new growth must secure a reliable and renewable water supply. The Assured Water Supply Program is a critically important regulatory tool to protect our aquifers and protect the water supplies that have already been set aside for our existing communities.

The ADAWS rules as currently proposed represent a delicate balance of hard fought compromises that were negotiated in good faith by all stakeholders. Efforts by some parties to make last minute changes to specific components of these rules could risk unraveling the good work done by all interested parties. The proposed ADAWS rules provide water providers with a very generous groundwater allowance and allow water providers the flexibility to pump groundwater while they develop the required infrastructure to transition to renewable water supplies. The 25% reduction in pumping is the foundation of striking a balance between the immediate needs of water providers who currently rely on groundwater and the long-term need to reduce groundwater mining over time. The "25% rule" ensures that as they acquire new non-groundwater supplies, 25% of those supplies will be used to reduce groundwater pumping in the future. This 25% rule is the primary mechanism to ensure this program continues to meet the objectives of the Assured Water Supply Program and the ADAWS will not be successful without this requirement. The original recommendation of the Governors' Water Policy Council required that 30% of all new non-groundwater supplies should be used to offset existing groundwater pumping. This volume has already been reduced to 25% and reducing it any further puts the entire program in jeopardy.

The City of Chandler respectfully requests that the GRRC approve the ADAWS rules as currently proposed by the Arizona Department of Water Resources.

Sincerely,

Simone Kjolsrud

Simone Kjolsrud
Water Resources Manager, City of Chandler

cc: John Knudson, Public Works & Utilities
Ryan Peters, Strategic Initiatives Director

Mailing Address
Mail Stop 905
PO Box 4008
Chandler, AZ 85244-4008
85286

Public Works & Utilities Department
Environmental Resources/Water Conservation
Telephone (480) 782-3580
Fax (480) 782-3805

Location
975 East Armstrong Way
Building L
Chandler, AZ

www.chandleraz.gov

October 29, 2024

Arizona Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

Re: Comments on the Proposed Alternative Designation of Assured Water Supply Rules

Dear Chairperson Klein and members of the Governor's Regulatory Review Council,

Please accept these comments relating to the proposed Alternative Designation of Assured Water Supply Rules. While we commend the Arizona Department of Water Resources' (ADWR) efforts to address the moratorium put into place by Governor Hobbs on new determinations of assured water supply in the Phoenix area, we have serous concerns about this proposal.

Firstly, the underlying reasons behind the need for an *Alternative* Designation of Assured Water Supply warrant serious scientific study and scrutiny. The 2023 Pheonix AMA groundwater model the estimates a 4% deficit in groundwater supplies in 100 years makes broad assumptions about points of groundwater withdrawal, existing and future water supplies, and future demand, which are proving to be far too simplistic and serve to overstate groundwater withdrawal.

Secondly, the ADAWS program places a 33% tax on homeowners in areas served by the ADAWS program. This tax is a subsidy, paid for by homeowners, to ensure water is in place for other industries unaffected by ADAWS rules, such as commercial and industrial users. This 33% tax does not pass the "rough proportionality" test pertaining to the 'tax' and the impact of the development on the community. Put simply, Arizona homeowners cannot and should not bear the burden of funding water supplies for corporate apartment interests, large scale industrial users, corporate commercial conglomerates, and the like. Besides being politically radioactive, this fee structure is likely to be found illegal if enacted.

Finally, as you all know, Arizona has a well-documented and severe housing affordability crisis. The single largest reason for this crisis is a significant shortage of available housing within our state. The fastest way to solve this crisis is to increase supply through the responsible construction of new homes.

A clear line is forming to connect this water moratorium to our affordability crises in the Phoenix metropolitan area. A crisis that is only growing and putting homeownership out of reach for increasing segments of our population. I encourage the Council to send this ADAWS rulemaking package back to ADWR and ask them to focus on finding ways to fund this program in a manner that asks hardworking Arizona homeowners to pay only for their fair share of water resources and no more.

Sincerely,

Robert Nunes
VP Sales and Marketing
Ashton Woods Homes - Phoenix

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Opposition of DWR's ADAWS and Commingling Rules

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Thu, Oct 31, 2024 at 4:35 PM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Jessica Cool <jessica.cool@ashtonwoods.com>
Date: Thursday, October 31, 2024 at 11:05:07 AM UTC-7
Subject: Opposition of DWR's ADAWS and Commingling Rules
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Dear Chairperson Klein and members of the Governor's Regulatory Review Council,

Please consider these comments regarding the proposed Alternative Designation of Assured Water Supply (ADAWS) Rules. We appreciate the Arizona Department of Water Resources' (ADWR) efforts to address the moratorium initiated by Governor Hobbs on new assured water supply determinations in the Phoenix area. However, I have significant concerns about this proposal. Homebuilding has replenished its groundwater use since 1995 and we want to continue building homes and protecting groundwater aquifers as we have done for over 30 years.

First, the rationale behind the need for an Alternative Designation of Assured Water Supply requires thorough scientific investigation and analysis. The 2023 Phoenix AMA groundwater model, which estimates a 4% groundwater deficit over the next 100 years, relies on broad assumptions about groundwater withdrawal locations, current and future water supplies, and anticipated demand. These assumptions risk oversimplifying and potentially overstating groundwater withdrawal rates.

Second, the ADAWS program imposes a 33% surcharge on homeowners in areas it serves. This surcharge effectively subsidizes water resources for industries not subject to ADAWS rules, such as commercial and industrial users. This 33% fee does not meet the "rough proportionality" standard between the imposed tax and the development's community impact. Arizona homeowners should not bear the financial responsibility for securing water resources that primarily benefit corporate apartment developments, large-scale industries, and commercial enterprises. Beyond being politically contentious, this fee structure could face legal challenges if enacted. State statute requires that new housing projects bring 100% but nothing more. Requiring future homeowners to pay for more than their fair share will put housing out of reach for even more hard-working families. Homeowners should not subsidize the water supplies for other users. If other land uses don't take responsibility for their water consumption, Arizona's water problems will remain unsolved..

Finally, Arizona is grappling with a severe housing affordability crisis, primarily driven by a critical housing shortage. The most effective way to address this crisis is by increasing housing availability through the responsible construction of new homes.

Sincerely,

Jessica Cool
Director of Land Acquisition
Ashton Woods - Phoenix Division

8655 E. Via De Ventura Suite F-250 | Scottsdale, AZ 85258
C 480 518 5358
Jessica.Cool@ashtonwoods.com | ashtonwoods.com

Gmail

Levi Bevis <levi.bevis@azdoa.gov>

Documents Files in Department of Water Resources (Title 12, Chapter 15)

dean luxconsultingllc.com <dean@luxconsultingllc.com> Fri, Nov 1,
To: "grrccomments@azdoa.gov" <grrccomments@azdoa.gov>
Cc: "simon.larscheidt@azdoa.gov" <simon.larscheidt@azdoa.gov>, "dean luxconsultingllc.com" <dean@luxconsultingllc.com>

I am filing the following documents in the Department of Water Resources ADAWS Rule-Making docket.

MY VIEW

Let's keep development flowing

JIM POULIN | PBJ

An aerial view of one of the Central Arizona Project water canals north of the Phoenix metro.

Vote on assured water supply key to future economic growth

On Nov. 5, the Governor's Regulatory Review Council will decide whether to approve an amendment to Arizona's assured water supply program. If you are not familiar with the state's assured water supply designation, no new subdivisions can be approved without first proving that water can be provided to those homes for 100 years.

This program, established by the landmark Arizona Groundwater Management Act in 1980, was further clarified in rules in 1995. Since then, more than 1,200 new subdivisions dependent on groundwater have been approved and 20 water providers have been designated as having an assured water supply in both the Phoenix and Pinal Active Management Areas, or AMAs. These AMAs are vast groundwater basins located in the Phoenix metropolitan area and in central Pinal County.

Fast forward to 2019, when the Arizona Department of Water Resources (ADWR) published a groundwater model that projects groundwater demands in the Pinal AMA would result in 10% of those demands being unmet during the 100-year period. Similarly, in 2023, ADWR published another groundwater model that projects demands in the Phoenix AMA could also not be met.

This resulted in ADWR declaring that no new assured water supply determinations could be issued in those groundwater basins until a solution is developed.

Subsequently, the Governor's Water Policy Council and stakeholders from water sectors worked with ADWR to prepare a third method for securing an assured water supply called the alternative designation of assured water supply, or ADAWS. This method, a hybrid of the two existing methods, will allow water providers to secure an assured water supply designation through the ADAWS. This means developers and builders will bring a sustainable water supply to meet the demands of the subdivisions, and water providers will bring an additional amount of sustainable water supplies to meet the groundwater demands of existing customers who have been using unreplenished groundwater for decades.

STEPHEN MILLER

CRAIG MCFARLAND

Without this solution, exist
customers who have been usin
unreplenished groundwater w
continue to deplete local aquif
While this solution might not l
right for every water provider,
this mechanism allows the tw
largest private water companie
in Arizona to secure a designat
of assured water supply, it's a
major accomplishment. It may
even be the single most signifi
advancement to the assured w
supply rules since their incepti

Once new assured water supply designations are issued new subdivisions will have an opportunity to develop, and th will create the additional hous supply we need in the Phoenix metro and Pinal County to sup all of the jobs being created th the industrial boom we curren enjoy.

These rules will ensure that homeowners never have to wo about having water. If these ru are not adopted, the price of housing may continue to climb until employers can no longer afford to pay employees enoug money to live in Arizona. These companies could begin to dive themselves of operations in Ar and relocate to states where wa security is less of a concern. In turn, this could lead to negativ economic impacts to Arizona t the assured water supply rules designed to prevent.

A lot is at stake Nov. 5 and n just in the presidential electior We urge you to help us strengt the assured water supply program by sending an email t grrccomments@azdoa.gov to s your support to the Governor's Regulatory Review Council bef the Nov. 5 meeting, and let the know an assured water supply important to you.

Stephen Miller represents Dist 3 on the Pinal County Board o Supervisors; Craig McFarland mayor of Casa Grande.

THE BUSINESS JOURNAL WELCOMES LETTERS TO THE EDITOR

Keep your comments brief and civil, and remember to mention which news story you're writing about. Submissions for "My View" or "Letters to the Editor" may be edited and published or otherwise used in any medium.

Email: Editor-in-Chief Greg Barr, gbarr@bizjournals.com

Dean Miller
(602) 451-2729
dean@luxconsultingllc.com

Lux Consulting

2 attachments

Editorial Az Republic.pdf
148K

Phx Blz Journal editorial.pdf
249K

My View: Vote on assured water supply key to Arizona's future economic growth

On Nov. 5, the Governor's Regulatory Review Council will decide whether to approve an amendment to Arizona's assured water supply program. If you are not familiar with the state's assured water supply designation, no new subdivisions can be approved without first proving that water can be provided to those homes for 100 years.

This program, established by the landmark Arizona Groundwater Management Act in 1980, was further clarified in rules in 1995. Since then, more than 1,200 new subdivisions dependent on groundwater have been approved and 20 water providers have been designated as having an assured water supply in both the Phoenix and Pinal Active Management Areas, or AMAs. These AMAs are vast groundwater basins located in the Phoenix metropolitan area and in central Pinal County.

Fast forward to 2019, when the Arizona Department of Water Resources (ADWR) published a groundwater model that projects groundwater demands in the Pinal AMA would result in 10% of those demands being unmet during the 100-year period. Similarly, in 2023, ADWR published another groundwater model that projects demands in the Phoenix AMA could also not be met.

This resulted in ADWR declaring that no new assured water supply determinations could be issued in those groundwater basins until a solution is developed.

Subsequently, the Governor's Water Policy Council and stakeholders from water sectors worked with ADWR to prepare a third method for securing an assured water supply called the alternative designation of assured water supply, or ADAWS. This method, a hybrid of the two existing methods, will allow water providers to secure an assured water supply designation through the ADAWS. This means developers and builders will bring a sustainable water supply to meet the demands of the subdivisions, and water providers will bring an additional amount of sustainable water supplies to meet the groundwater demands of existing customers who have been using unreplenished groundwater for decades.

Development will help support jobs, population growth

Without this solution, existing customers who have been using unreplenished groundwater will continue to deplete local aquifers. While this solution might not be right for every water provider, if this mechanism allows the two largest private water companies in Arizona to secure a designation of assured water supply, it's a major accomplishment. It may even be the single most significant advancement to the assured water supply rules since their inception.

Once new assured water supply designations are issued, new subdivisions will have an opportunity to develop, and this will create the additional housing supply we need in the Phoenix metro and Pinal County to support all of the jobs being created through the industrial boom we currently enjoy.

These rules will ensure that homeowners never have to worry about having water. If these rules are not adopted, the price of housing may continue to climb until employers can no longer afford to pay employees enough money to live in Arizona. These companies could begin to divest themselves of operations in Arizona and relocate to states where water security is less of a

concern. In turn, this could lead to negative economic impacts to Arizona that the assured water supply rules were designed to prevent.

A lot is at stake Nov. 5 and not just in the presidential election. We urge you to help us strengthen the assured water supply program by sending an email to grrccomments@azdoa.gov to show your support to the Governor's Regulatory Review Council before the Nov. 5 meeting, and let them know an assured water supply is important to you.

Stephen Miller represents District 3 on the Pinal County Board of Supervisors; Craig McFarland is mayor of Casa Grande.

expand

Stephen Miller, Pinal County supervisor
STEPHEN MILLER

expand

Craig McFarland, mayor of Casa Grande.
JIM POULIN | PHOENIX BUSINESS JOURNAL

Opinion: This could help metro Phoenix save a lot of water. But some want to kill it

Two Arizona water providers say new rules could help them use a lot less groundwater over time. But others are trying to scuttle the plan.

Joanna Allhands

Arizona Republic

Arizona is considering the most significant change in decades to its Assured Water Supply program, which helps ensure that new growth has acquired enough water for the long haul.

It's not perfect.

But it also has the potential to do a great amount of good.

And yet, some folks are trying to kill it.

ADAWS was supposed to help Buckeye, Queen Creek

The idea behind the Alternative path to Designation of Assured Water Supply, or ADAWS for short, was initially to help Buckeye and Queen Creek become designated water providers.

Such a designation signifies that they have secured enough renewable water supplies to handle all users within their service territories for at least 100 years.

Both cities are heavily reliant on groundwater, and ADAWS was supposed to offer them a bridge, allowing them to continue pumping finite groundwater for a time while they acquired the renewable supplies necessary to earn a designation.

This short-term groundwater allowance also would help some homebuilders resume projects that were paused after models found unmet demand for water over time.

Now, some key players want to kill the proposal

But after months of negotiation, Buckeye and Queen Creek say the new pathway to designation won't work for them. They still can't pencil out the amount of water and infrastructure that it would require.

Meanwhile, homebuilders don't like the package because, in their estimation, it places an unfair burden on developers to replenish groundwater.

And the two gatekeepers for water legislation in the Arizona House and Senate — Rep. Gail Griffin and Sen. Sine Kerr — are pressing a rulemaking review panel to scuttle it, arguing, among other things, that the state Department of Water Resources lacks the authority to do what it has proposed.

Even still, there is wide support for the changes among the 235 comments received on the proposal.

And, perhaps most importantly, two other key players — Arizona Water Co. and EPCOR — are planning to apply for the designation as soon as it passes.

2 major water providers say the rules work

These private water providers differ from Buckeye and Queen Creek, in that they already have renewable supplies that they are hoping to repurpose under the new rules to receive a designation.

There would be a lot to gain if they did.

Arizona Water serves Casa Grande and Coolidge, and EPCOR serves parts of the West Valley, areas where a hefty amount of industrial growth has occurred.

There are factories making electric vehicles, businesses supporting the state's growing semiconductor industry and water-intensive beverage manufacturers — none of which are currently required to replenish the groundwater they pump.

That changes under a designation.

Providers must put back water in the ground for every kind of user they serve, including homes that were built before state law required subdivisions to replenish their groundwater pumping.

This could positively impact metro Phoenix

This is particularly important for EPCOR, where 60% of its West Valley customers are now not required to replenish what they pump. For Arizona Water, about half of its demand in Casa Grande and Coolidge goes unreplenished.

Even better for the aquifer, these two providers would be replenishing groundwater closer to where it is pumped, instead of storing their renewable supplies underground, miles away from where water is being withdrawn.

These areas could begin to refill a dwindling pipeline of new homes, which are needed to keep pace with the additional jobs that factories have created.

Opinion: Forced water regulations? They could be coming

Designating Arizona Water and EPCOR also could have an outsized impact on the Central Arizona Groundwater Replenishment District, which must find renewable water sources to replenish pumping from its members, because Arizona Water and EPCOR have more member lands than Buckeye and Queen Creek.

Early estimates suggest that while the replenishment district's obligations could increase in the short term, they should decrease over the long haul as Arizona Water and EPCOR take over that task.

Keep working on the warts, but don't kill it

ADAWS is a big change in policy, and as with any big change, there will be kinks to work out.

Homebuilders have suggested, for example, that replenishment requirements should be proportional to how much water each user is pumping, instead of requiring a blanket 25%.

It's a reasonable suggestion that should be considered, or at least modeled to see how it might impact the health of the aquifer.

ADAWS also could be more of a possibility for Queen Creek and Buckeye if legislation passes to help convert some ag lands to urban uses and they are able to apply those water savings to their designations.

But why let perfect be the enemy of good?

Even if Buckeye and Queen Creek are out for now, two other major water providers are ready to use the new rules immediately.

Their designations could have positive impacts on housing and water management that reverberate all over metro Phoenix and Pinal County.

This is real progress that, over time, should decrease the amount of groundwater we use.

Don't scuttle that now.

Joanna Allhands writes opinions primarily about Arizona water and the Colorado River. Reach her at joanna.allhands@arizonarepublic.com or on X, formerly Twitter, @joannaallhands.

Gmail

Levi Bevis <levi.bevis@azdoa.gov>

Clarification of Support for the GRCC's Alternative Designation of Assured Water Supply Proposed Rule

1 message

'AR Reese' via GRRC Comments - ADOA <grrccomments@azdoa.gov> Mon, Nov 4, 2024 at 8:24 AM
Reply-To: AR Reese <stanfieldroad@yahoo.com>
To: grrccomments@azdoa.gov

To clarify my email, below, I support the Govenor's Regulatory Review Council's ("GRCC") proposed Alternative Designation of Assured Water Supply ("ADAWS").

AR Reese, Member
Synadase Farms, LLC

Re: Support for the Governor's Regulatory Review Council Proposed Rules to Strengthen an Assured Water Supply

> On Nov 1, 2024, at 5:37 PM, AR Reese <stanfieldroad@yahoo.com> wrote:
>
> To Whom It May Concern,
>
> I strongly support the Governor's Regulatory Review Counsel's proposed rules for a program to strengthen an assured water supply.
>
> AR Reese, Member
> Synadase Farms, LLC

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Town of Queen Creek Support for the ADAWS Rules

1 message

Osborn, Marcus B. <Marcus.Osborn@kutakrock.com> Mon, Nov 4, 2024 at 3:01 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>
Cc: Heather Wilkey <heather.wilkey@queencreekaz.gov>, Patrick Adams <padams@az.gov>

On behalf of the Town of Queen Creek, I want to continue to express our support for the ADAWS rulemaking package as presented by the Arizona Department of Water Resources. Assuring our water future is a significant priority for the Town of Queen Creek. We believe that the combination of the ADAWS rules, regulatory/statutory changes and an incentive program allowing agricultural land to be transitioned to urban use, will create a pathway for the Town to ultimately become designated. While we've suggested some improvements to the rule package in order to take advantage of it sooner, the ADAWS program is essential for the Town's water resource efforts. Thank you for the consideration and again we would urge your approval of the ADAWS rulemaking package at the earliest opportunity. Please feel free to contact me should you have any questions about the Town's position on the proposed rulemaking. I would appreciated if you would forward this email to the Council members. Thank you, Marc Osborn

Marcus B Osborn, PhD

Kutak Rock LLP

Senior Director-Government Affairs

8601 North Scottsdale Road

Suite 300

Scottsdale, Arizona 85253

Office 480-429-5000

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Mobile 602-791-7957

Marc.Osborn@kutakrock.com

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Thank you.

MEMORANDUM

To:	Governor's Regulatory Review Council
From:	Nicole Klobas, Chief Counsel, ADWR
Date:	10/31/2024
Re:	**ADWR Notice of Final Rulemaking regarding an Alternative Path to Obtain a Designation of Assured Water Supply (ADAWS)**

During the discussion of the Arizona Department of Water Resources' (ADWR) Notice of Final Rulemaking regarding an alternative path to obtaining a designation of assured water supply (ADAWS rules), the chair and members of the Governor's Regulatory Review Council (Council) raised questions regarding the ADAWS rules and asked that ADWR provide supplemental information in response. This memorandum addresses whether the ADAWS rules create a new license or licensing requirement without the requisite authority, pursuant to A.R.S. § 41-1030(B), which provides:

> An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.

The ADAWS rules do not exceed ADWR's authority and are consistent with A.R.S. § 41-1030(B). The ADAWS rules do not create a new license. Instead, the ADAWS rules create a new, optional condition for a license that applicants may pursue as an alternative to an existing license condition, both of which are authorized by A.R.S. § 45-576.

Background:

In order to develop a subdivision within an active management area (AMA), including both the Phoenix AMA and the Pinal AMA, state statute requires an assurance that the new development will have a 100-year supply of water for the new growth, without unfairly or adversely affecting the water supply for current residents and consistent with achieving the management goal of the AMA. Specifically, A.R.S. § 45-576 provides, in relevant part:[1]

[1] Section 45-576, A.R.S., is also provided in its entirety as Attachment A to this memorandum.

A. Except as provided in subsections G and J of this section, a person who proposes to offer subdivided lands, as defined in section 32-2101, for sale or lease in an active management area shall apply for and obtain a certificate of assured water supply from the director before presenting the plat for approval to the city, town or county in which the land is located, where such is required, and before filing with the state real estate commissioner a notice of intention to offer such lands for sale or lease, pursuant to section 32-2181, *unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section*.

…

D. The director shall designate private water companies in active management areas that have an assured water supply….

…

E. The director shall designate cities and towns in active management areas where an assured water supply exists....

…

H. The director shall adopt rules to carry out the purposes of this section….

…

M. For the purposes of this section, "assured water supply" means all of the following:
   1. Sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years….[2]
   2. The projected groundwater use is consistent with the management plan and achievement of the management goal for the active management area.
   3. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use, including a delivery system and any storage

[2] The remainder of subparagraph (M)(1) of A.R.S. § 45-576 includes a definition that pertains only to a member of a "groundwater replenishment district," established pursuant to title 48, chapter 27, which has never been established. *See* A.R.S. § 45-402(14). The entity referred to in the assured water supply rules as the Central Arizona Groundwater Replenishment District, or CAGRD, is a multi-county water conservation district acting in its capacity pursuant to A.R.S. Title 48, Chapter 22. *See* A.R.S. § 45-401(5); A.A.C. R12-701(17).

> facilities or treatment works. The director may accept evidence of the construction assurances required by section 9-463.01, 11-823 or 32-2181 to satisfy this requirement.

Emphasis added. The current rules adopted pursuant to A.R.S. § 45-576(H) require that a new applicant for a designation of assured water supply demonstrate physical availability of its water supplies. A.A.C. R12-15-710(E). The rule for demonstrating physical availability of a groundwater supply requires that "the applicant shall submit a hydrologic study, using a method of analysis approved by the Director" to demonstrate that groundwater will be withdrawn from depths that do not exceed 1,000 feet below land surface in the Phoenix AMA or 1,100 feet below land surface in the Pinal AMA, taking into account the groundwater pumping in the area associated with existing uses and other assured water supply determinations. A.A.C. R12-15-716(B)(2)-(3).

The ADAWS rules seek to modify the requirements of A.A.C. R12-15-710(E) to allow an additional and alternative method to demonstrate physical availability. Rather than submitting a hydrologic study pursuant to 716(B), the applicant may choose to satisfy the provisions of a new subsection (H), which provides:

> 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.

Notice of Final Rulemaking at pp. 20-21.

Analysis:

Subsections (D), (E), and (H) of A.R.S. § 45-576 clearly and explicitly authorize ADWR to adopt rules providing for a license in the form of a designation of assured water supply for cities, towns and private water companies. Additionally, the definition of "assured water supply" in A.R.S. § 45-576(M) undoubtedly authorizes ADWR to require evidence that groundwater included in the application will be physically available for 100 years, as required by the existing provisions of A.A.C. R12-15-710(E) and R12-15-716(B).

This new subsection (H) in the ADAWS rules allows the applicant to include a volume of groundwater that is "deemed" to be physically available, based on existing uses and issued certificates. However, if the applicant elects to use this path to demonstrate physical availability, the applicant must still satisfy other requirements. One of those requirements is that the existing and approved uses of groundwater will, over time, be reduced in part as they are replaced by "new alternative water supplies," as defined in the ADAWS rules.

Notably, the ADAWS rules *do not reduce* the volume of new alternative supplies that are available to the applicant water provider. Instead, the ADAWS rules *reduce the volume of groundwater that is deemed to be physically available without a hydrologic study*, as alternative supplies are added to the designation. Therefore, if an applicant seeks to utilize the proposed ADAWS rules to "bypass" the existing requirement set forth in A.A.C. R12-15-716(B) for demonstrating that groundwater is physically available using a hydrologic study, the applicant may only include a prescribed volume of groundwater. That limited volume of groundwater will also be reduced as the water provider adds new supplies to the designation. Therefore, in the long term, the water provider will be using less groundwater than the water provider would have used if the water provider had not opted to become designated.

The ADAWS rules provide a second, optional method to demonstrate physical availability of groundwater. It logically follows that the same statute that authorizes ADWR to adopt a rule requiring an applicant for a designation to demonstrate physical availability of groundwater allows ADWR to adopt a rule providing two methods from which to choose for making that demonstration.

A plain reading of the ADAWS rules makes clear that a water provider seeking a designation of assured water supply is never required to satisfy the requirements of the new subsection (H) of A.A.C. R12-15-710. In fact, A.A.C. R12-15-710(E) will still allow a designation applicant to demonstrate physical availability of groundwater through a hydrologic study, pursuant to the existing requirements in A.A.C. R12-15-716(B). Additionally, a designation applicant may seek to obtain a designation without including any volume of groundwater. Moreover, no water provider is ever required to obtain a designation of assured water supply, as it is completely optional.

One or more of the public comments during the study session and in the written comments submitted to the Council suggest that the ADAWS rules impose a requirement on *developers* to provide more water than is required for their individual subdivision to demonstrate an assured water supply. This is a simple misunderstanding of the ADAWS rules. The ADAWS rules do not apply to developers. Developers are not eligible for a designation of assured water supply (which, pursuant to A.R.S. § 45-576(D)-(E), is only available to a city, town, or private water company). Instead, a *developer* would apply for a *certificate* of assured water supply, as provided in A.R.S. § 45-576(A) and A.A.C. R12-15-704. Therefore, the ADAWS rules impose no requirements on any developer for any project.

Conclusion: The provision in the ADAWS rules adding an alternative option for demonstrating physical availability of groundwater in an application for a designation of assured water supply is consistent with ADWR's authority pursuant to A.R.S. § 45-576 and is therefore consistent with A.R.S. § 41-1030(B).

ATTACHMENT A

45-576. Certificate of assured water supply; designated cities, towns and private water companies; exemptions; definition

A. Except as provided in subsections G and J of this section, a person who proposes to offer subdivided lands, as defined in section 32-2101, for sale or lease in an active management area shall apply for and obtain a certificate of assured water supply from the director before presenting the plat for approval to the city, town or county in which the land is located, where such is required, and before filing with the state real estate commissioner a notice of intention to offer such lands for sale or lease, pursuant to section 32-2181, unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

B. Except as provided in subsections G and J of this section, a city, town or county may approve a subdivision plat only if the subdivider has obtained a certificate of assured water supply from the director or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section. The city, town or county shall note on the face of the approved plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

C. Except as provided in subsections G and J of this section, the state real estate commissioner may issue a public report authorizing the sale or lease of subdivided lands only on compliance with either of the following:

1. The subdivider, owner or agent has paid any activation fee required under section 48-3772, subsection A, paragraph 7 and any replenishment reserve fee required under section 48-3774.01, subsection A, paragraph 2 and has obtained a certificate of assured water supply from the director.

2. The subdivider has obtained a written commitment of water service for the lands from a city, town or private water company designated as having an assured water supply pursuant to this section and the subdivider, owner or agent has paid any activation fee required under section 48-3772, subsection A, paragraph 7.

D. The director shall designate private water companies in active management areas that have an assured water supply. If a city or town acquires a private water company that has contracted for central Arizona project water, the city or town shall assume the private water company's contract for central Arizona project water.

E. The director shall designate cities and towns in active management areas where an assured water supply exists. If a city or town has entered into a contract for central Arizona project water, the city or town is deemed to continue to have an assured water supply until December 31, 1997. Commencing on January 1, 1998, the determination that the city or town has an assured water supply is subject to review by the director and the director may determine that a city or town does not have an assured water supply.

F. The director shall notify the mayors of all cities and towns in active management areas and the chairmen of the boards of supervisors of counties in which active management areas are located of the cities, towns and private water companies designated as having an assured water supply and any modification of that designation within thirty days of the designation or modification. If the service area of the city, town or private water company has qualified as a member service area pursuant to title 48, chapter 22, article 4, the director shall also notify the conservation district of the designation or modification and shall report the projected average annual replenishment obligation for the member service area based on the projected and committed average annual demand for water within the service area during the effective term of the designation or modification subject to any limitation in an agreement between the conservation district and the city, town or private water company. For each city, town or private water company that qualified as a member service area under title 48, chapter 22 and was designated as having an assured water supply before January 1, 2004, the director shall report to the conservation district on or before January 1, 2005 the projected average annual replenishment obligation based on the projected and committed average annual demand for water within the service area during the effective term of the designation subject to any limitation in an agreement between the conservation district and the city,

town or private water company. Persons proposing to offer subdivided lands served by those designated cities, towns and private water companies for sale or lease are exempt from applying for and obtaining a certificate of assured water supply.

G. This section does not apply in the case of the sale of lands for developments that are subject to a mineral extraction and processing permit or an industrial use permit pursuant to sections 45-514 and 45-515.

H. The director shall adopt rules to carry out the purposes of this section. On or before January 1, 2008, the rules shall provide for a reduction in water demand for an application for a designation of assured water supply or a certificate of assured water supply if a gray water reuse system will be installed that meets the requirements of the rules adopted by the department of environmental quality for gray water systems and if the application is for a certificate of assured water supply, the land for which the certificate is sought must qualify as a member land in a conservation district pursuant to title 48, chapter 22, article 4. For the purposes of this subsection, "gray water" has the same meaning prescribed in section 49-201.

I. If the director designates a municipal provider as having an assured water supply under this section and the designation lapses or otherwise terminates while the municipal provider's service area is a member service area of a conservation district, the municipal provider or its successor shall continue to comply with the consistency with management goal requirements in the rules adopted by the director under subsection H of this section as if the designation was still in effect with respect to the municipal provider's designation uses. When determining compliance by the municipal provider or its successor with the consistency with management goal requirements in the rules, the director shall consider only water delivered by the municipal provider or its successor to the municipal provider's designation uses. A person is the successor of a municipal provider if the person commences water service to uses that were previously designation uses of the municipal provider. Any groundwater delivered by the municipal provider or its successor to the municipal provider's designation uses in excess of the amount allowed under the consistency with management goal requirements in the rules shall be considered excess groundwater for purposes of title 48, chapter 22. For the purposes of this subsection, "designation uses" means all water uses served by a municipal provider on the date the municipal provider's designation of assured water supply lapses or otherwise terminates and all recorded lots within the municipal provider's service area that were not being served by the municipal provider on that date but that received final plat approval from a city, town or county on or before that date. Designation uses do not include industrial uses served by an irrigation district under section 45-497.

J. Subsections A, B and C of this section do not apply to a person who proposes to offer subdivided land for sale or lease in an active management area if all the following apply:

1. The director issued a certificate of assured water supply for the land to a previous owner of the land and the certificate was classified as a type A certificate under rules adopted by the director pursuant to subsection H of this section.

2. The director has not revoked the certificate of assured water supply described in paragraph 1 of this subsection, and proceedings to revoke the certificate are not pending before the department or a court. The department shall post on its website a list of all certificates of assured water supply that have been revoked or for which proceedings are pending before the department or a court.

3. The plat submitted to the department in the application for the certificate of assured water supply described in paragraph 1 of this subsection has not changed.

4. Water service is currently available to each lot within the subdivided land and the water provider listed on the certificate of assured water supply described in paragraph 1 of this subsection has not changed.

5. The subdivided land qualifies as a member land under title 48, chapter 22 and the subdivider has paid any activation fee required under section 48-3772, subsection A, paragraph 7 and any replenishment reserve fee required under section 48-3774.01, subsection A, paragraph 2.

6. The plat is submitted for approval to a city, town or county that is listed on the department's website as a qualified platting authority.

K. Subsection J of this section does not affect the assignment of a certificate of assured water supply as prescribed by section 45-579.

L. On or before December 31, 2023, the director shall study and submit to the governor, president of the senate and speaker of the house of representatives a report on whether and how a person that seeks a building permit for six or more residences within an active management area, without regard to any proposed lease term for those residences, should apply for and obtain a certificate of assured water supply from the director before presenting the permit application for approval to the county in which the land is located, unless the applicant has obtained a written commitment of water service for the residences from a city, town or private water company designated as having an assured water supply pursuant to this section.

M. For the purposes of this section, "assured water supply" means all of the following:

1. Sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, with respect to an applicant that is a member of the district, "sufficient groundwater" for the purposes of this paragraph means that the proposed groundwater withdrawals that the applicant will cause over a period of one hundred years will be of adequate quality and will not exceed, in combination with other withdrawals from land in the replenishment district, a depth to water of one thousand feet or the depth of the bottom of the aquifer, whichever is less. In determining depth to water for the purposes of this paragraph, the director shall consider the combination of:

(a) The existing rate of decline.

(b) The proposed withdrawals.

(c) The expected water requirements of all recorded lots that are not yet served water and that are located in the service area of a municipal provider.

2. The projected groundwater use is consistent with the management plan and achievement of the management goal for the active management area.

3. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use, including a delivery system and any storage facilities or treatment works. The director may accept evidence of the construction assurances required by section 9-463.01, 11-823 or 32-2181 to satisfy this requirement.

November 4, 2024

Jessica Klein
ADOA General Counsel and Chair
Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Re: Proposed DWR Water Rules

Dear Chairperson Klein,

I represent the Home Builders Association of Central Arizona ("HBACA" or "Association") and submit this second letter concerning the Department of Water Resource's ("DWR's" or "Department's") August 23, 2024 proposed rules ("Proposed Rules") regarding designations of assured water supply, one of which will be considered at the Council's November 5, 2024 meeting. I urge the Council to reject the Proposed Rules for the reasons stated in my October 23 letter and for four additional or related reasons arising out of the Council's October 29 meeting.

First, the Department's presentation at the October 29 meeting made painfully apparent that the Department *has no justification for the proposed 25% offset* (which amounts to a 33.3% water tax on new users). The Proposed Rules offer no explanation for why that number—as opposed to some other, like Department's projected 4% unmet demand model, was adopted.

The 25% offset/33.3% water tax is thus arbitrary and indefensible. To the extent that a defensible rationale exists that could justify that 25% number, the Department simply has yet to offer it. Instead, the Department suggested at the October 29 meeting that the number "came from discussions," none of which are disclosed or explained in the Proposed Rules.

Second, the Department's claim that the 33.3% water tax does not impose a "license" requirement and thus comports with A.R.S. § 41-1030(B) is incorrect. The Department's own Proposed Rules explicitly say that "a designation of Assured Water Supply ... *is a license.*" 30 A.A.R. 2,620, 2,628 (Aug. 23, 2024) (emphasis added); *see also id.* at 2638 ("[A] certificate of Assured Water Supply... *is a license.*" (emphasis added))

The Department's October 31 Memorandum contends that the Proposed Rules "are consistent with A.R.S. § 41-1030(B)," because they "do not create a new license" and instead "create a new, optional condition for a license." DWR Oct. 31 Memo. at 1.

That contention fails on two levels. As an initial matter, the Proposed Rules *are effectively not optional at all.* As Nicole Klobas, the Department's Chief Counsel, *admitted* in the Council's October 29 meeting, the Proposed Rules represent "the only feasible path" for many home builders. Where the Proposed Rules are the "only feasible path," they are hardly an "optional condition," but rather an inescapable mandate for obtaining a license—*i.e.*, a licensing condition. Where the

Department has effectively *admitted* that its Proposed Rules create an unavoidable condition for many builders to obtain a license, its "optional condition" argument is not legally sustainable.

But even if the Department's purely "optional condition" premise was correct, the Proposed Rules *would still violate A.R.S. § 41-1030(B).* That provision provides that an "agency shall not base a licensing decision *in whole or in part* on a licensing requirement or condition that is not *specifically authorized* by statute, rule or state tribal gaming compact." (emphasis added). As HBACA explained in its October 23 letter, the 33.3% water tax is affirmatively precluded by A.R.S. § 45-576(M)—and certainly not "specifically authorized." And because § 41-1030(B) explicitly prohibits the Department from relying on a requirement even "*in part*" if it is not "*specifically authorized by statute*," the Proposed Rule's reliance on the 33.3% water tax is unlawful under that provision even if it were truly optional (and it is not). To the extent that the Department intends to "base a licensing decision [even] ... in part" on compliance with the 33.3% water tax, the Proposed Rules are unlawful.

Third, the Proposed Rules' estimate of costs as being only "minimal" cannot withstand scrutiny. Water is not free—particnlarly in Arizona. And the Department's premise that it can ignore the costs of the Proposed Rules because they are purportedly "optional" is wholly incompatible with the Departnent's admission that the Proposed Rules represent "the only feasible path" for many builders. Indeed, the Proposed Rnles *could add thousands or tens of thousands of dollars* to the cost of every new home bnilt under its auspices—none of which are analyzed *at all* to date.

To estimate the Proposed Rules' true costs—which are assuredly not "minimal" at all—the HBACA has commissioned Elliott D. Pollack and Company to prepare an estimate to the actual costs of the 33.3% water tax. It expects that this analysis will be available within the next 60 days and urges the Council not to approve any rule until that cost is available.

Fourth, the October 29 hearing further clarified that the Proposed Rules impose "new fees" in the form of the 33.3% water tax. It could thus only be approved by this Council by a 2/3 vote. *See* A.R.S. § 41-1052(E).

For all of these reasons and those previously expressed in my October 23 letter, the Council should either delay consideration of the Proposed Rules at its November 5 hearing or reject them outright.

Please feel free to contact me if you have any questions or would like to discuss any of this further. I can be reached at (480) 773-1411 and agould@holtzmanvogel.com.

Respectfully,

/s/ Andrew Gould
Andrew Gould

Re: Meritage Homes Opposition to Proposed ADWR Water Rules

Dear Members of the Governor's Regulatory Review Council,

Meritage Homes is one of the largest home builders in the U.S. with corporate headquarters located in Scottsdale and operations in the Phoenix and Tucson markets. Meritage strongly supports environmental stewardship and responsible use of our natural resources in every home, every community, and in every market that we build. I am writing to express our serious concerns regarding the proposed rules by the Arizona Department of Water Resources (ADWR), specifically the Alternative Designation of Assured Water Supply (ADAWS) rule and the comingling rule. While we understand the intent behind these rules is to address water challenges, the conditions imposed will have significant negative impacts on the home building industry and future homeowners.

The requirement for new projects to secure 133% of the water needed under **ADAWS** and 130% under the **comingling rule** effectively imposes a "water tax" on homeowners. This additional burden will drastically increase the cost of housing, exacerbating Arizona's already severe housing affordability crisis. It is unfair to expect future homeowners to subsidize water use for other land users, which these rules would mandate. This approach not only undermines housing affordability but also places an undue financial strain on families striving to achieve homeownership.

Moreover, these rules do not provide sufficient groundwater certainty for areas like Buckeye and Queen Creek, making it difficult for landowners to proceed with housing projects. The lack of guaranteed groundwater supply during the transition to designated status creates significant uncertainty. This uncertainty hinders the ability of developers to plan and execute housing projects, potentially stalling growth and development in these areas. Additionally, the requirement for excess water procurement does not address the root causes of groundwater depletion and instead places an undue financial burden on new homeowners.

The home building industry has a long history of replenishing its groundwater use since 1995, demonstrating a commitment to sustainable water management. However, the proposed rules shift the responsibility of securing future water supplies disproportionately onto homeowners, rather than addressing the broader systemic issues. This shift could lead to a scenario where other land users continue to deplete groundwater resources without adequate accountability, further exacerbating the state's water challenges.

ADWR has not provided adequate evidence that these rules will effectively address our water problems, nor have they engaged in meaningful consultation with stakeholders like the HBACA to discuss these concerns. The lack of stakeholder engagement and transparency in the

rule-making process is troubling and undermines the credibility of the proposed regulations. Without a comprehensive and collaborative approach, these rules risk exacerbating current issues rather than providing sustainable solutions.

We urge the GRRC to reconsider these rules and ensure that any new regulations are fair, legal, and do not place an undue burden on homeowners. It is crucial that any measures taken to address water challenges are balanced, equitable, and based on thorough consultation with all affected parties/industry leaders. Thank you for your attention to this critical issue.

Sincerely,

Ian Hughes
Vice President of Environmental and Government Affairs
Meritage Homes
727-804-9026
ian.hughes@meritagehomes.com

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Oppose ADAWS

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Tue, Nov 5, 2024 at 8:18 AM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Patrick Neil Brown <PNBrown@drhorton.com>
Date: Tuesday, November 5, 2024 at 7:26:15 AM UTC-7
Subject: Oppose ADAWS
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Please oppose DWR's ADAWs new rules. This is not a fix for the industry as it is written. Home building has replenished its groundwater use since 1995. We just want to keep building homes and protecting our groundwater aquifers as we have done for over 30 years. Arizona has a severe housing affordability crisis, and water is incredibly expensive. As currently written, one is required to bring 130% of the necessary water to meet the standards not 100%. If you were charged 130% for your goods you would not want to accept that either or chose not to purchase those goods. The same will happen to homebuilders. Consumers will choose other locations such as projects already in designated areas. This will also affect economic development as companies choose between Arizona and places like Texas to relocate to. If their employees can't afford homes, then that is a disadvantage for our State. This will continue to add pressure to the designated municipalities for growth versus an ag to urban approach. ADWR has no intention on working with HBACA even as we have requested several meetings. This is not a solution. Thanks,

D·R·HORTON
America's Builder

Patrick Brown

Vice President of Operations

D.R. HORTON – PHOENIX WEST DIVISION

7689 E. Pinnacle Peak Rd, Suite 200, Scottsdale, AZ 85255

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Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Proposed DWR Water Rules

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Tue, Nov 5, 2024 at 8:17 AM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: James Attwood <James.Attwood@tripointehomes.com>
Date: Monday, November 4, 2024 at 4:36:27 PM UTC-7
Subject: Proposed DWR Water Rules
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

To whom it may concern,

My name is James Attwood, and I am the Division President for Tri Pointe Homes Arizona, a homebuilder with a rich 30+ year history across Arizona. I am writing to express my concern and opposition to DWR's proposed ADAWS rules.

I have worked for Tri Pointe Homes (previously Maracay Homes) for over 18 years. I take great pride in the homes and communities we have built across Arizona. I also take pride in the fact that we are a sustainable industry, both with the energy efficient and water conserving products that we use, but also because we are the only industry that has fully replenished its groundwater use since 1995.

Currently, Arizona is in the midst of a housing and housing affordability crisis, and I am deeply concerned that the actions being taken and rules being proposed by DWR will have a severe, detrimental impact on housing affordability. As proposed, homebuilders, and subsequently future homeowners, will be subsidizing the water supplies and costs involved for all other water users. Any water challenge we are looking to address will not be solved unless other users are responsible for their water use as well.

I appreciate your consideration, and hope that you agree, that as homebuilders we are working to address a critical need for Arizona and its residents. We should be working toward water solutions that address our housing affordability challenges as well.

Thank you,

tri pointe HOMES James Attwood DIVISION PRESIDENT E James.Attwood@TriPointeHomes.com O 480.346.5201 M 602.319.3039 W TriPointeHomes.com
A 7001 N. Scottsdale Road, Suite 2020 Scottsdale, AZ 85253 Tri Pointe Homes Arizona Construction, LLC - ROC License #172120

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510 E. Florence Blvd., Casa Grande, Arizona 85122
(520) 421-8600 | www.CasaGrandeAZ.gov

November 14, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7, 2024

Dear Members of the Governor's Regulatory Review Council,

I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department of Water Resources (ADWR), is vital for promoting sustainable water management and economic growth in our state.

I am writing this letter in my capacity as the new Mayor of Casa Grande to express my support for the ADAWS rules package submitted by ADWR on October 7th, 2024 and heard by the Council on October 22nd and November 5th.

I am aware, ADWR has worked tirelessly with stakeholders to develop the ADAWS option. This alternative has been reached to provide a balance between the two existing methods for securing an assured water supply determination. These new rules provide an alternative path for securing a Designation of Assured Water Supply in the Phoenix and Pinal Active Management Areas. Casa Grande sees this as a valuable and sustainable opportunity for economic growth throughout the city and across the entire county. I am proud to stand alongside representatives from various business sectors in Pinal County who are submitting letters of endorsement for the ADAWS. I fully support these new rules and the letters of my colleagues, and I encourage the adoption of the ADAWS as it represents a significant advancement for Pinal County.

Having been raised and educated in Casa Grande and having personally worked in many of the business sectors within Pinal County, I have a unique perspective on the direct impact these proposed rules will have for Pinal County. I support the State's Assured Water Supply Program and the importance of its role in providing water security in Arizona. However, the existing methods are no longer viable for many communities, water providers, developers, builders and ultimately the homeowners they serve. The

ADAWS introduces a new approach that offers a practical solution for Arizona Water Company that serves the vast majority of Cas Grande to secure an Assured Water Supply. Arizona Water Company serves or will serve nearly 23% of the more than 1,200 groundwater-based subdivisions approved since the Assured Water Supply rules were first implemented 30 years ago. If these new rules are adopted, they will advance the Assured Water Supply framework more than any previous effort since the original rules were enacted in 1995, and as a result will establish the appropriate foundation for sustainable economic growth in Pinal County.

The proposed rules package is a critical next step in resolving the recent groundwater modeling issues that have resulted in no new assured water supply determinations being issued. These new rules create opportunities for land without existing determinations to contribute to the development of desperately needed affordable housing in Casa Grande and in Pinal County as a whole. We can no longer depend solely on groundwater solutions; every day we delay in investing in sustainable water supplies makes housing less affordable for our residents. The proposed rules present a reasonable and necessary path forward, enabling us to build a resilient community anchored in water security and economic vitality.

Thank you for your attention to this important matter. I appreciate the Council's efforts to ensure that Arizona's regulatory processes are clear, effective, and conducive to the needs of our communities. I look forward to your support in approving these crucial new rules.

Sincerely,

Lisa Navarro Fitzgibbons
Mayor-Elect

Re: Meritage Homes Opposition to Proposed ADWR Water Rules

Dear Members of the Governor's Regulatory Review Council,

Meritage Homes is one of the largest home builders in the U.S. with corporate headquarters located in Scottsdale and operations in the Phoenix and Tucson markets. Meritage strongly supports environmental stewardship and responsible use of our natural resources in every home, every community, and in every market that we build. I am writing to express our serious concerns regarding the proposed rules by the Arizona Department of Water Resources (ADWR), specifically the Alternative Designation of Assured Water Supply (ADAWS) rule and the comingling rule. While we understand the intent behind these rules is to address water challenges, the conditions imposed will have significant negative impacts on the home building industry and future homeowners.

The requirement for new projects to secure 133% of the water needed under **ADAWS** and 130% under the **comingling rule** effectively imposes a "water tax" on homeowners. This additional burden will drastically increase the cost of housing, exacerbating Arizona's already severe housing affordability crisis. It is unfair to expect future homeowners to subsidize water use for other land users, which these rules would mandate. This approach not only undermines housing affordability but also places an undue financial strain on families striving to achieve homeownership.

Moreover, these rules do not provide sufficient groundwater certainty for areas like Buckeye and Queen Creek, making it difficult for landowners to proceed with housing projects. The lack of guaranteed groundwater supply during the transition to designated status creates significant uncertainty. This uncertainty hinders the ability of developers to plan and execute housing projects, potentially stalling growth and development in these areas. Additionally, the requirement for excess water procurement does not address the root causes of groundwater depletion and instead places an undue financial burden on new homeowners.

The home building industry has a long history of replenishing its groundwater use since 1995, demonstrating a commitment to sustainable water management. However, the proposed rules shift the responsibility of securing future water supplies disproportionately onto homeowners, rather than addressing the broader systemic issues. This shift could lead to a scenario where other land users continue to deplete groundwater resources without adequate accountability, further exacerbating the state's water challenges.

ADWR has not provided adequate evidence that these rules will effectively address our water problems, nor have they engaged in meaningful consultation with stakeholders like the HBACA to discuss these concerns. The lack of stakeholder engagement and transparency in the

rule-making process is troubling and undermines the credibility of the proposed regulations. Without a comprehensive and collaborative approach, these rules risk exacerbating current issues rather than providing sustainable solutions.

We urge the GRRC to reconsider these rules and ensure that any new regulations are fair, legal, and do not place an undue burden on homeowners. It is crucial that any measures taken to address water challenges are balanced, equitable, and based on thorough consultation with all affected parties/industry leaders. Thank you for your attention to this critical issue.

Sincerely,

Ian Hughes
Vice President of Environmental and Government Affairs
Meritage Homes
727-804-9026
ian.hughes@meritagehomes.com

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Oppose ADAWS

Simon Larscheidt <simon.larscheidt@azdoa.gov> Tue, Nov 5, 2024 at 8:18 AM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Patrick Neil Brown <PNBrown@drhorton.com>
Date: Tuesday, November 5, 2024 at 7:26:15 AM UTC-7
Subject: Oppose ADAWS
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

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Patrick Brown

Vice President of Operations

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Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: HBACA comments regarding ADAWS

1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Tue, Nov 19, 2024 at 8:50 AM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Spencer Kamps <kampss@hbaca.org>
Date: Monday, November 18, 2024 at 4:54:01 PM UTC-7
Subject: HBACA comments regarding ADAWS
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Andrew Gould <agould@holtzmanvogel.com>, Drew Ensign <densign@holtzmanvogel.com>, Jackson Moll <mollj@hbaca.org>

Members of the Governor's Regulatory Review Committee,

I am writing today to provide clarification on my comments that were given during the recent GRRC hearing on October 29th related to the ADAWS package.

First, I stand by my comments that the HBACA was not thoroughly consulted on the development of the rules package. The Department did not engage in a true consultation process with the HBACA, and our concerns were never discussed, debated, or negotiated. After engaging with state agencies for several decades in the rule making process on behalf of the home building industry, we have never had so little engagement with a state agency over a rule that creates such a significant financial impact on one industry.

I was afforded the opportunity to meet with the Director of the Department on October 21st for a holistic discussion regarding Arizona's water future. The meeting was not focused on ADAWS but most importantly, the meeting took place after the rule package was sent to GRRC on October 7th. We did not discuss the rule package at this meeting, but rather we discussed the housing projects that have been halted for over a year and a half since the release of the Phoenix AMA Groundwater Model. Specifically, the HBACA wanted to get an understanding of the Director's plan moving forward to resolve the over five billion dollars the home building industry has invested in infrastructure for projects in Northern Buckeye. This issue was of critical importance since it looks like the City of Buckeye cannot pursue a Designation of Assured Water Supply under the ADAWS rule package because of the unfavorable terms set forth in the rule. Due to this, numerous master-plan communities have no solution on how to proceed with the construction of much needed housing—construction that could address our critical housing shortage in Arizona. Unfortunately, it does not look like ADWR has any proposal to solve these zombie communities.

When the concepts of the ADAWS rule was discussed at the Governor's Water Council meeting in 2023, of which I am a member, I raised concerns that the future homeowners should not bear any financial responsibility for subsidizing the water use of non-replenishing groundwater users. The reason for this is because every homeowner since 1995 has paid for their water and the cost of replenishing their groundwater use. Therefore, if the groundwater aquifers are suffering, this was not caused by homeowners' water use. These costs should be borne by development that uses mined groundwater such as commercial, industrial and rentals. Due to my comments at the Governor's Water Council, ADWR was fully aware of the concerns of the HBACA but did not engage in any serious discussions with our industry to resolve these concerns before or after the draft rule was released in August of 2024.

The Association has submitted oral comments and written comments about the deficiencies of the rule-making package. We have not received any feedback from the Department regarding our direct and real concerns.

I believe that if the Department conducted an open, transparent, and thorough consultation process, we may have developed a solution to ensure that the real and significant costs associated with this rule package would not be passed onto homeowners.

While we were not consulted on this rule package, I am under the impression that other stakeholders did undertake a private consultation process and had more access to the Department though the development of this rule package. As an example, a few private utilities have been afforded the opportunity to begin the application process for an Alternative Designation of Assured Water Supply even before the rule package has been adopted by GRRC.

I would encourage GRRC to rescind these rules and require the Department to conduct a thorough and public consultation and stakeholder process with all impacted entities to ensure that we find a solution that will guarantee housing affordability and that future homeowners are not required to carry the cost of historic non-replenishing water users in the Phoenix and Pinal AMA's.

This rule-making package is of utmost importance for the state. Every stakeholder, including the HBACA, has a vested interest to ensure that we continue to provide affordable housing solutions for all of Arizona's citizens.

Sincerely,

HBACA
Home Builders Association of Central Arizona

Spencer Kamps | Vice President Legislative Affairs

Home Builders Association of Central Arizona

7310 N. 16th Street, Suite 305 Phoenix, AZ 85020

0 -602.274.6545 C-602 770-0063 | www.hbaca.org

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Phoenix AMA Groundwater Model

June 2, 2023

If you are on the webinar, please have microphones on mute.

At the end of the meeting, we will take questions.

If you are online, please submit a question via the online comment form available in the chat.

Phoenix AMA Groundwater Model

Calibration and 100-year AWS Projection

Arizona Department of Water Resources

June 2, 2023

Agenda

- AWS Program Overview
- Development of the Phoenix AMA Groundwater Model
- Description & Results of the 100-year AWS Projection
- Key Takeaways

Assured Water Supply (AWS) Program Overview

- Adequacy program created statewide in 1973 to provide consumer protection
- Evaluates the availability of a 100-year water supply considering existing, approved and project demands
- AWS program developed in 1980 to add groundwater management components to adequacy program
- Operates in Arizona's Active Management Areas (AMAs)

AWS Program Implementation

- Within AMAs, a developer of a proposed subdivision must have a 100-year Assured Water Supply to obtain plat approval and offer lots for sale
- Two ways for a developer to demonstrate an AWS:
  - Obtain a commitment of water service from a water provider that has been designated by ADWR as having an AWS
  - Obtain a Certificate of AWS from ADWR by demonstrating that the subdivision will have a 100-year AWS

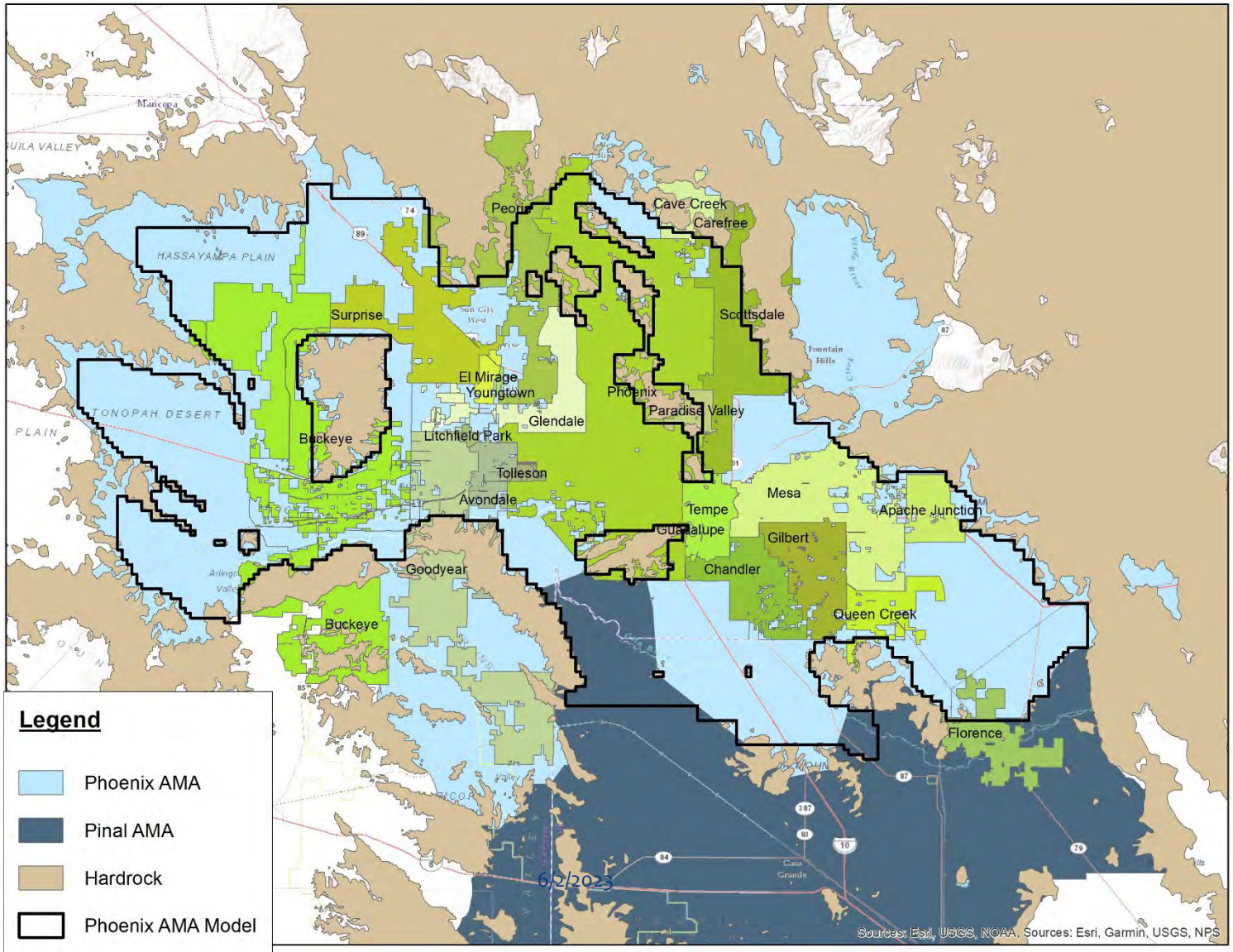
AWS Criteria

- Physical, continuous, and legal availability for 100 years
- Other requirements related to financial capability, water quality, and consistency with Management Plan/Goal
- Physical availability of groundwater is demonstrated with a model

History of Model Development

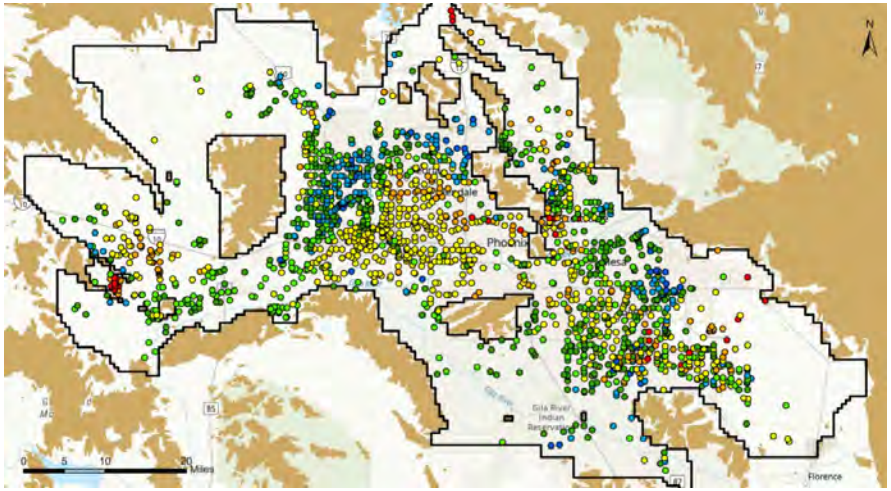
- 1990s ADWR created a MODFLOW model of the Salt River Valley (ESRV and WSRV)
- Most recently updated in 2009
- Brown and Caldwell 2006 Lower Hassayampa model
- ADWR updated/recalibrated the 2023 Lower Hassayampa model and 100-year AWS projection
- 2023 release of Phoenix AMA model, which combines the SRV with the Lower Hassayampa

Phoenix AMA Model Development



Phoenix AMA Model Calibration

- Calibration period of pre-1900 to 2021 (122 years)
- Multiple types of calibration targets
  - 40,577 WLEs from wells
  - 325 aquifer tests
  - Streamflow from 5 gaging stations
  - Baseflow from historical observations
- Peer-reviewed
- Industry standard robust calibration
- Consistent with conceptual model
- Best-available science for use with the AWS program



Distribution of Head Residuals in Layer 2

Average Head Residual (Layer 2) (feet)

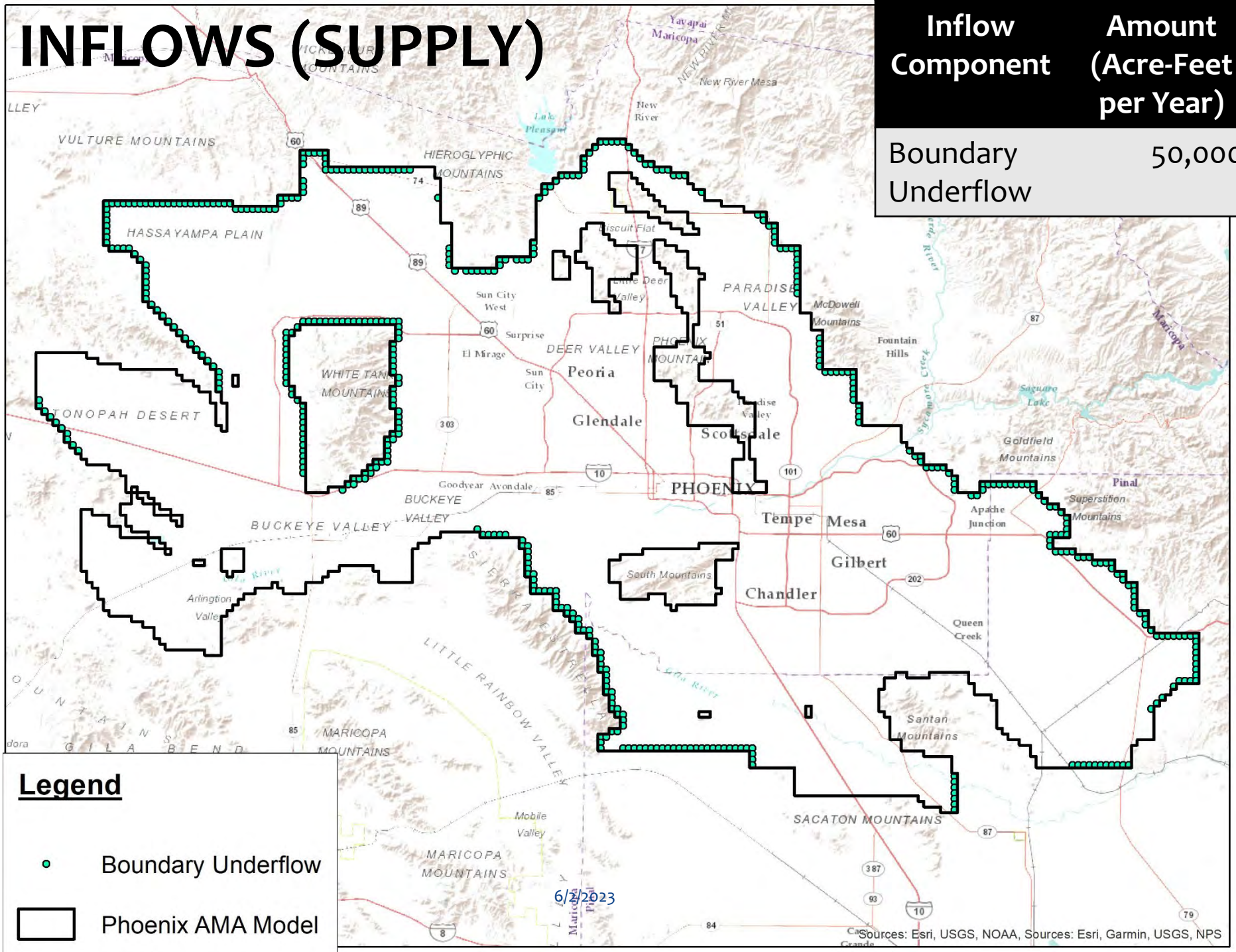
- -148 to -100
- -100 to -50
- -50 to -10
- -10 to 10
- 10 to 50
- 50 to 100
- 100 to 230
- Active Model Domain
- Bedrock

Using the Model for Projection Purposes

- Distinction between the calibrated model and the 100-year projection
- "Build the tool; use the tool"
- Run the model with the AWS program requirements for supply and demand based on:
  - Historical recharge rates (calibrated model)
  - Existing demands (reported pumping)
  - Issued demand (AWS program)

INFLOWS (SUPPLY)

Inflow Component	Amount (Acre-Feet per Year)
Boundary Underflow	50,000

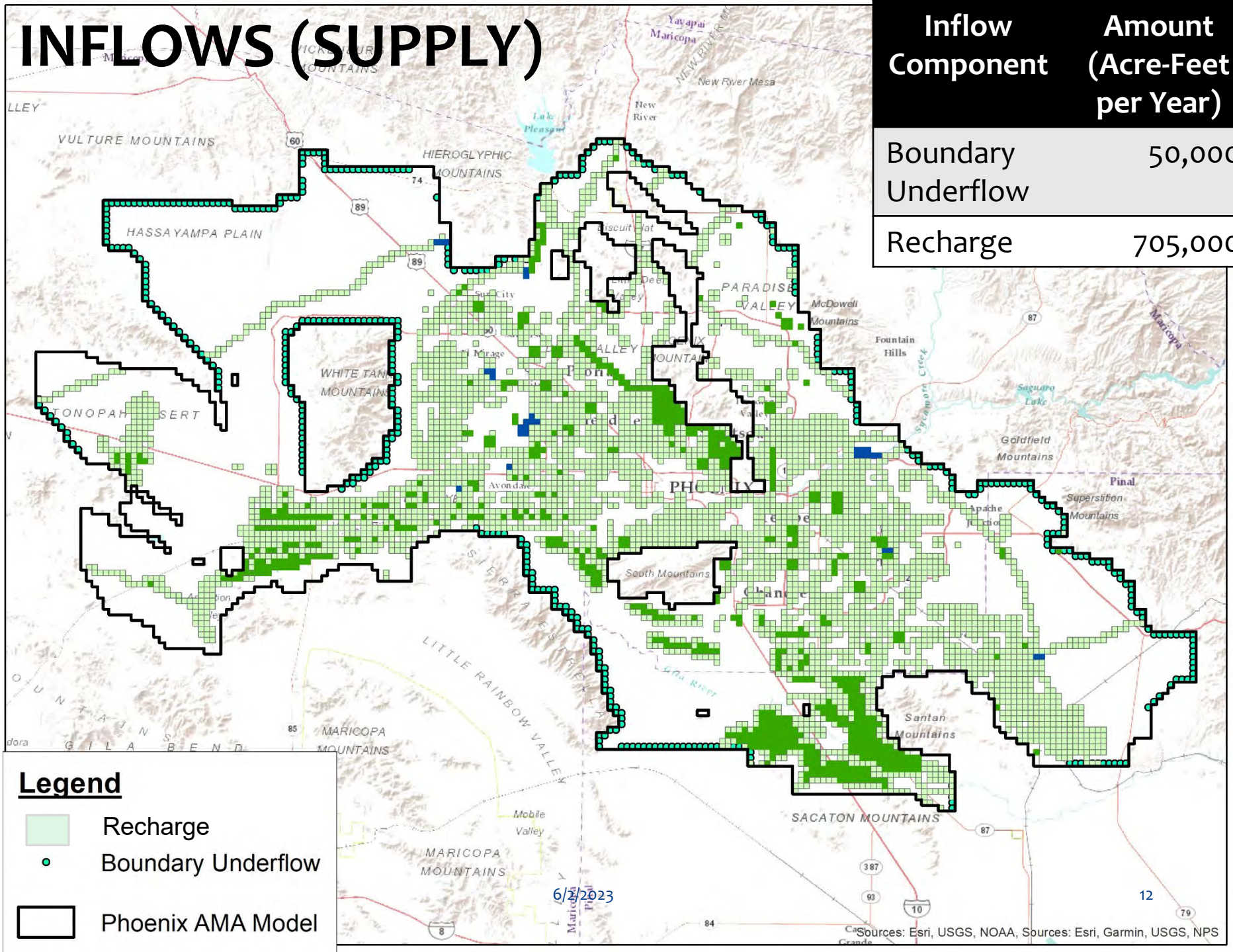


Legend

- Boundary Underflow
- Phoenix AMA Model

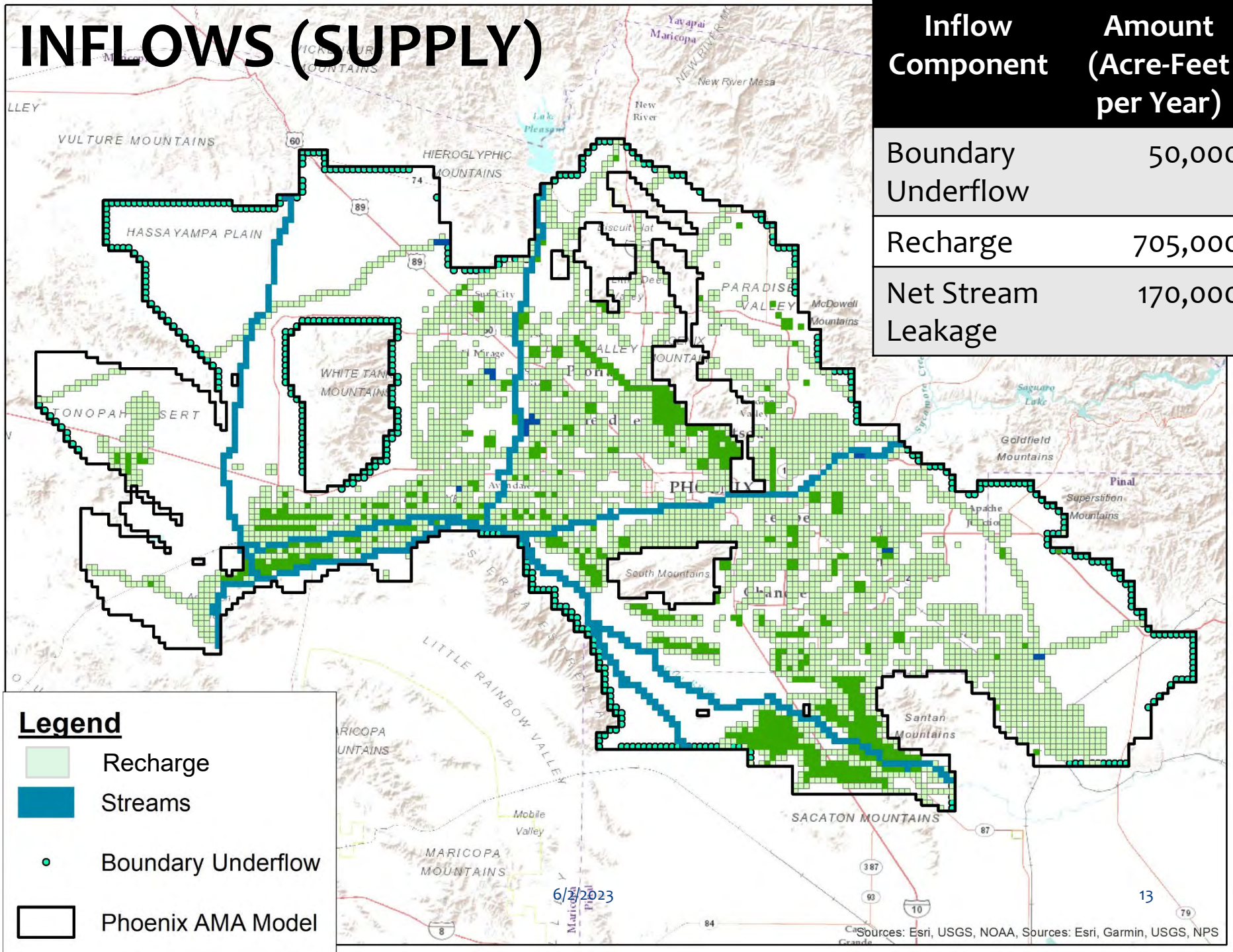
INFLOWS (SUPPLY)

Inflow Component	Amount (Acre-Feet per Year)
Boundary Underflow	50,000
Recharge	705,000

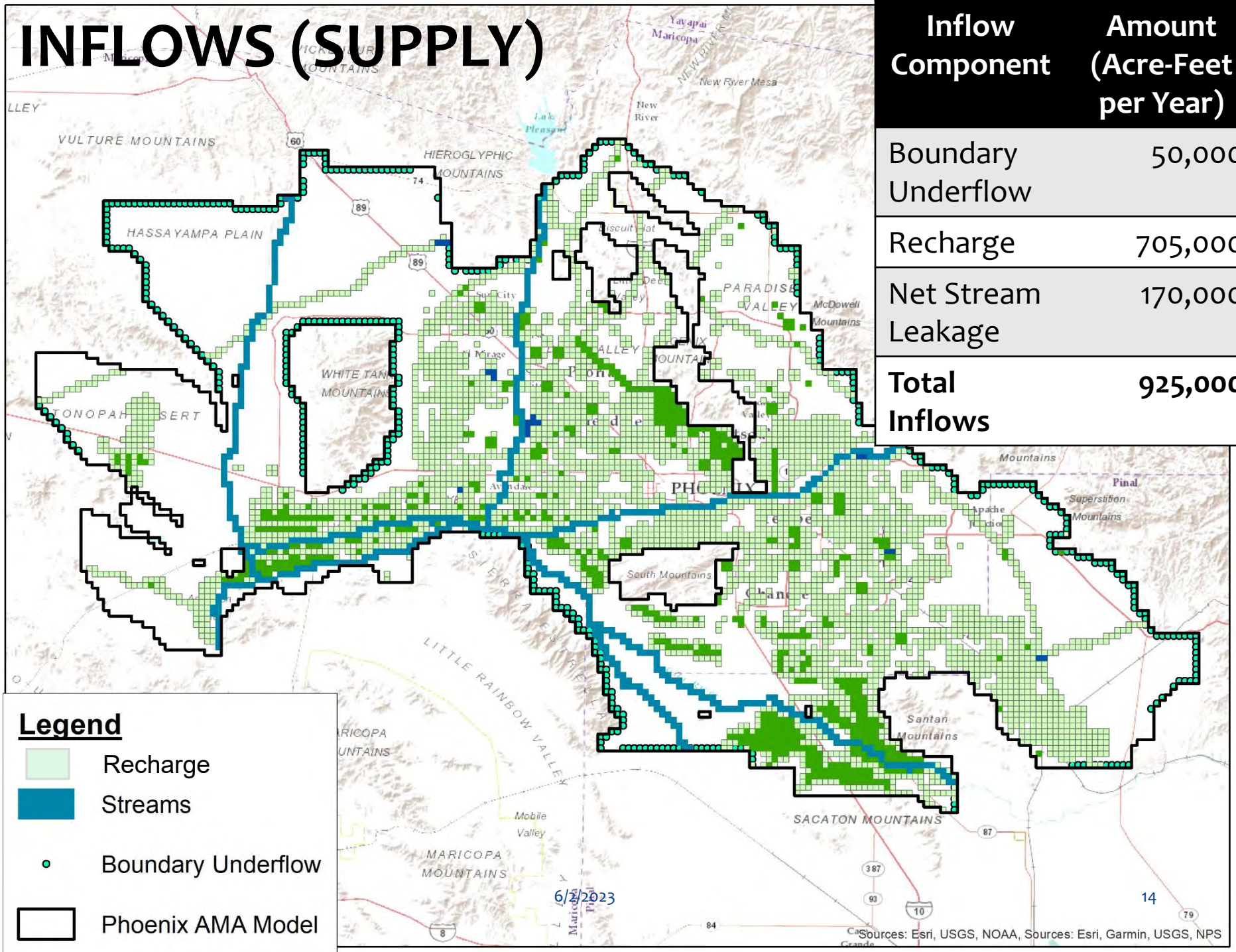


INFLOWS (SUPPLY)

Inflow Component	Amount (Acre-Feet per Year)
Boundary Underflow	50,000
Recharge	705,000
Net Stream Leakage	170,000



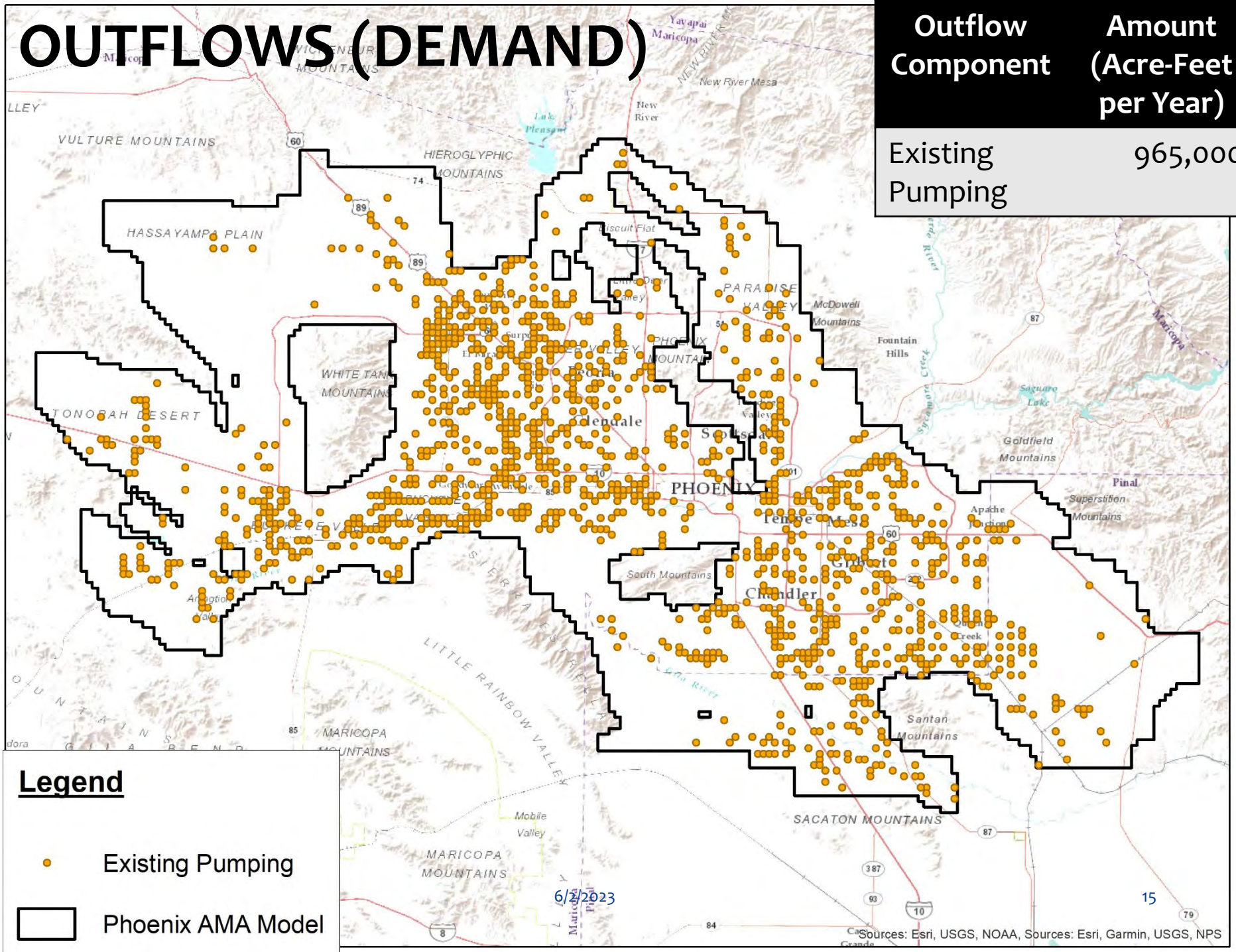
INFLOWS (SUPPLY)



Inflow Component	Amount (Acre-Feet per Year)
Boundary Underflow	50,000
Recharge	705,000
Net Stream Leakage	170,000
Total Inflows	**925,000**

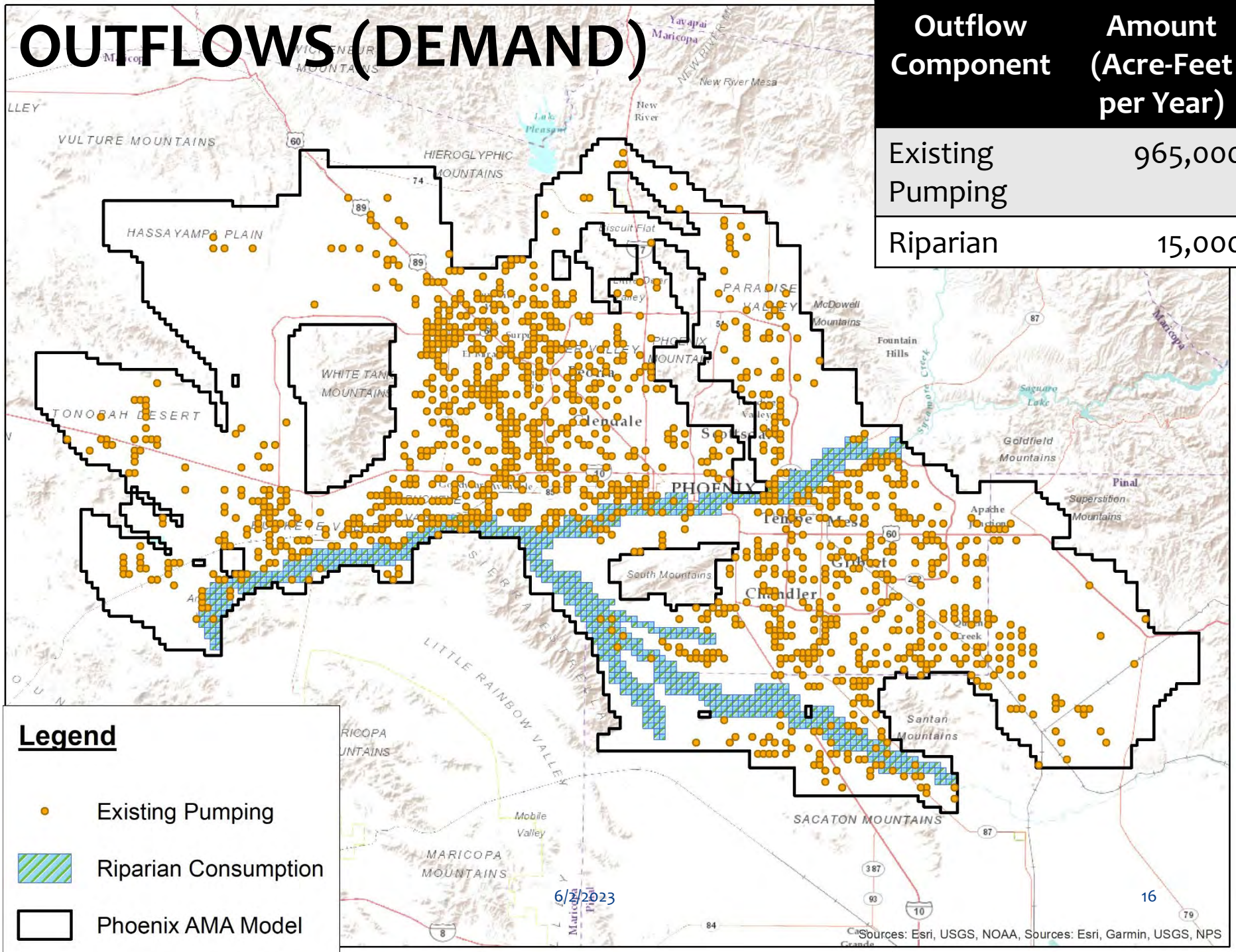
OUTFLOWS (DEMAND)

Outflow Component	Amount (Acre-Feet per Year)
Existing Pumping	965,000



OUTFLOWS (DEMAND)

Outflow Component	Amount (Acre-Feet per Year)
Existing Pumping	965,000
Riparian	15,000

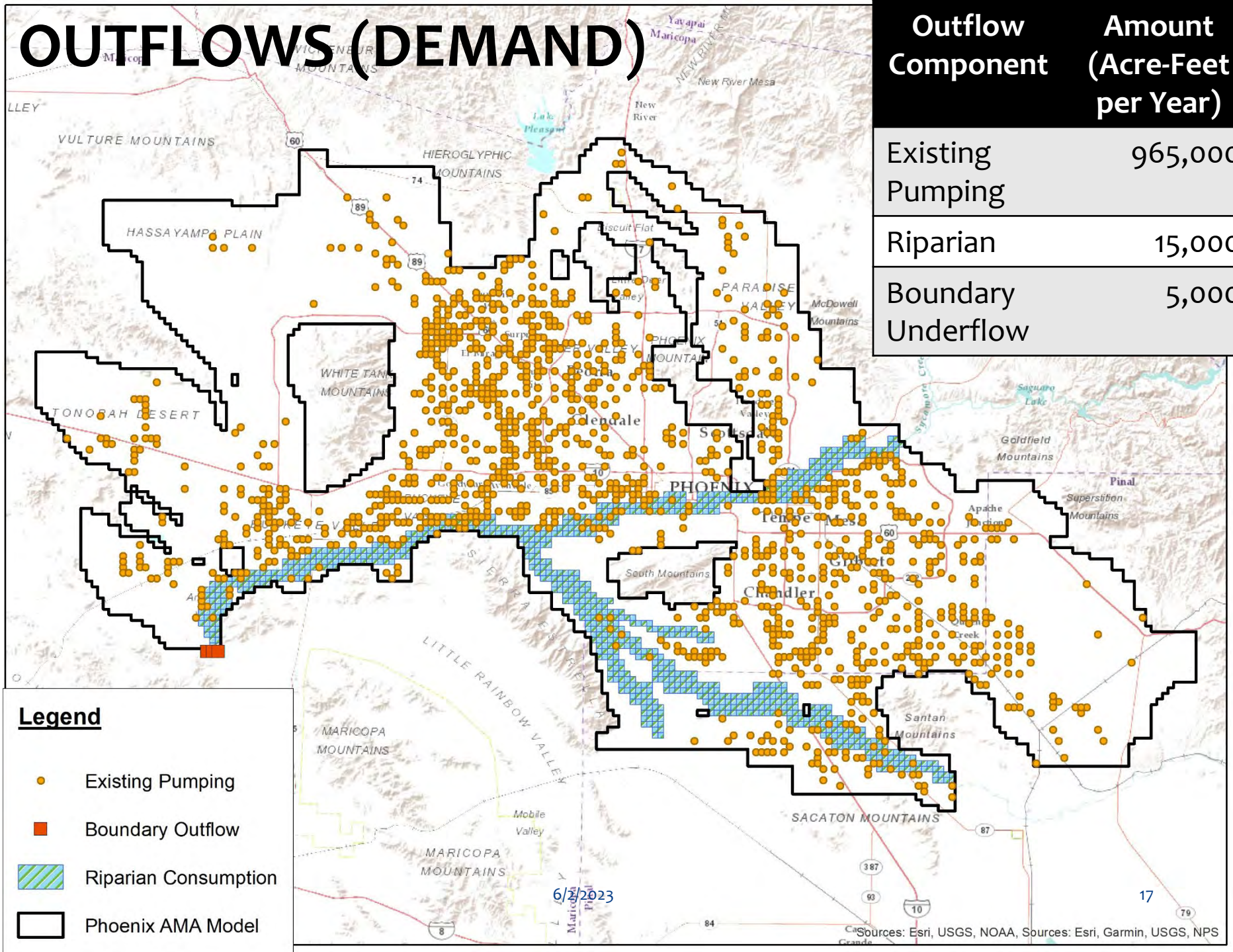


Legend

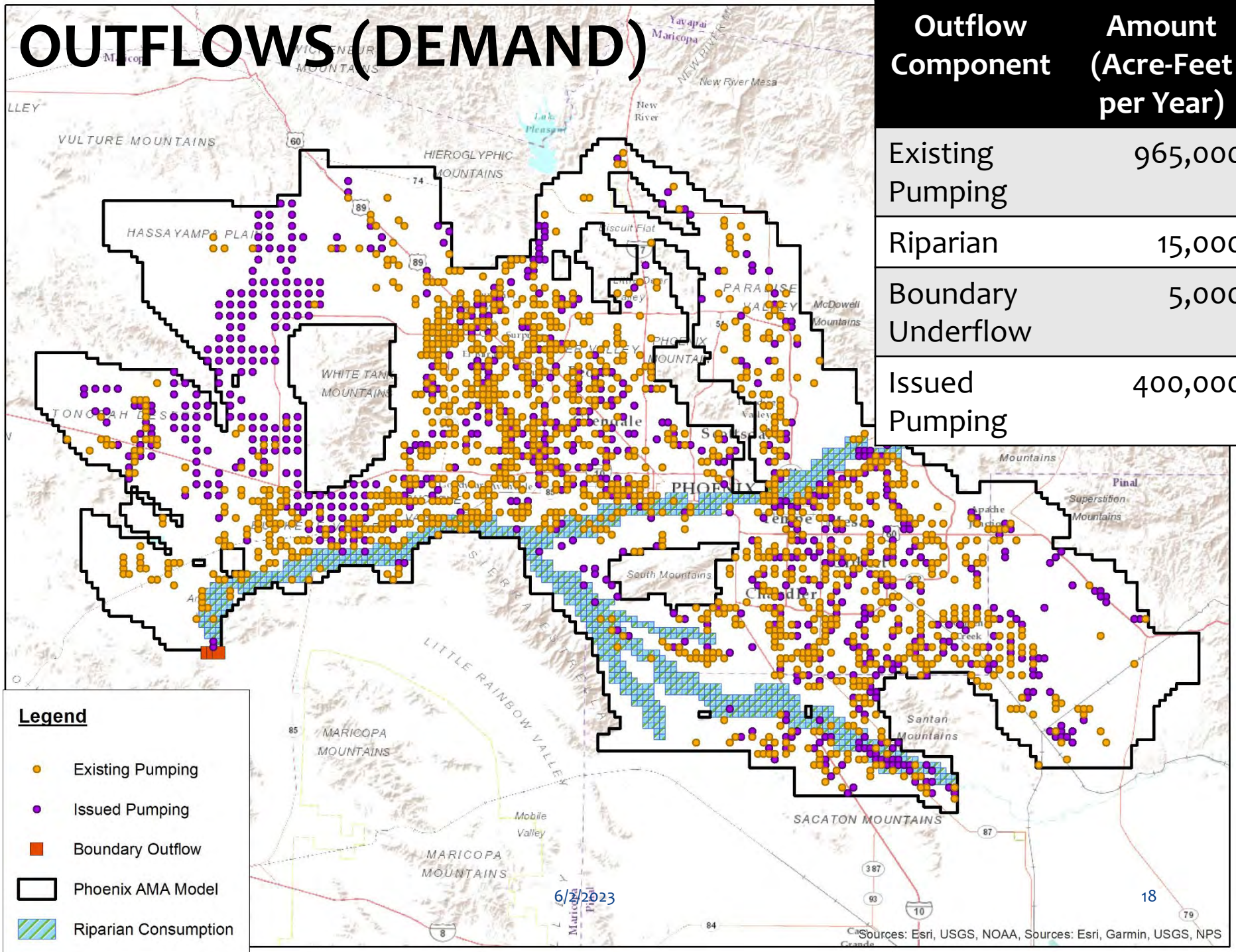
- Existing Pumping
- Riparian Consumption
- Phoenix AMA Model

OUTFLOWS (DEMAND)

Outflow Component	Amount (Acre-Feet per Year)
Existing Pumping	965,000
Riparian	15,000
Boundary Underflow	5,000



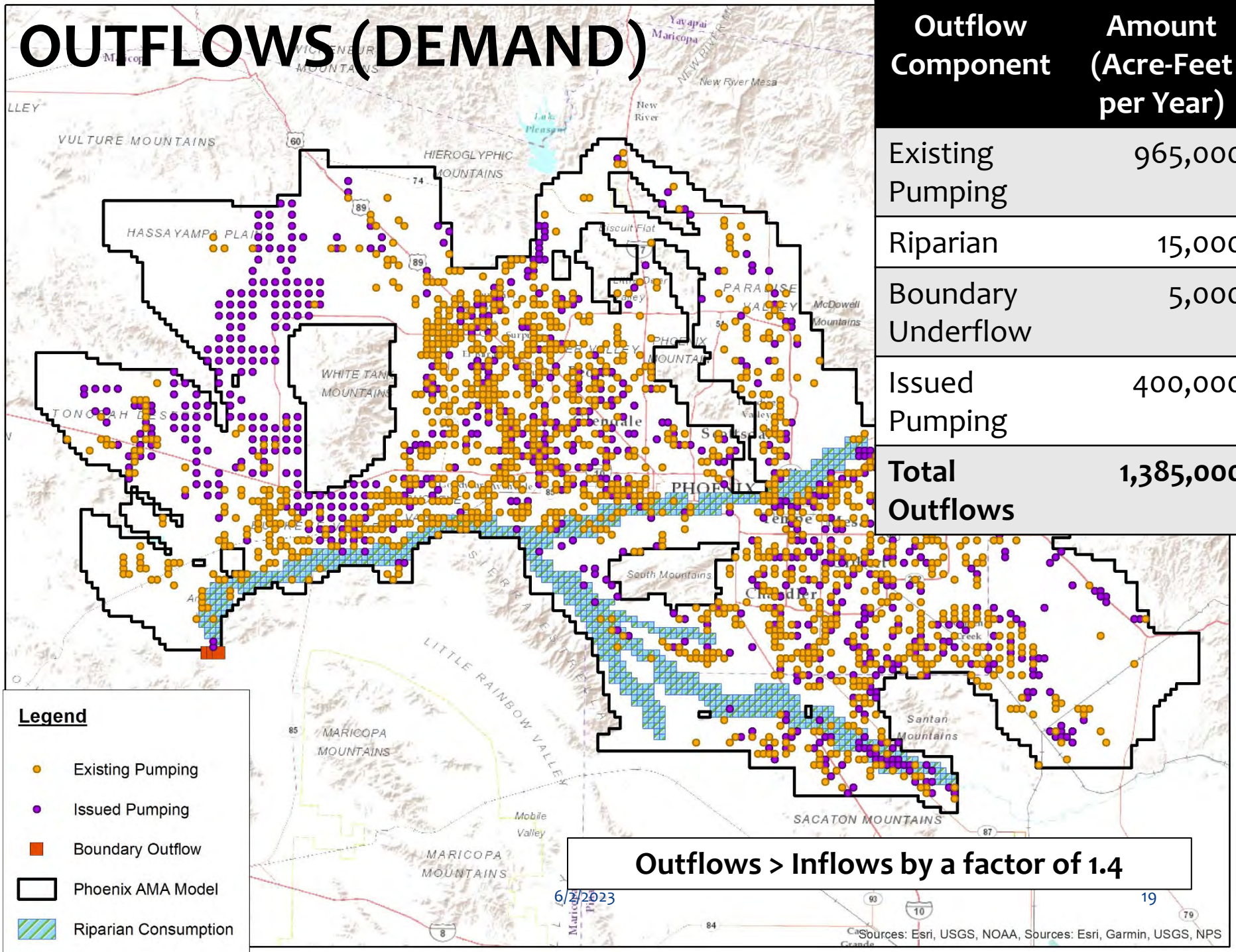
OUTFLOWS (DEMAND)



Outflow Component	Amount (Acre-Feet per Year)
Existing Pumping	965,000
Riparian	15,000
Boundary Underflow	5,000
Issued Pumping	400,000

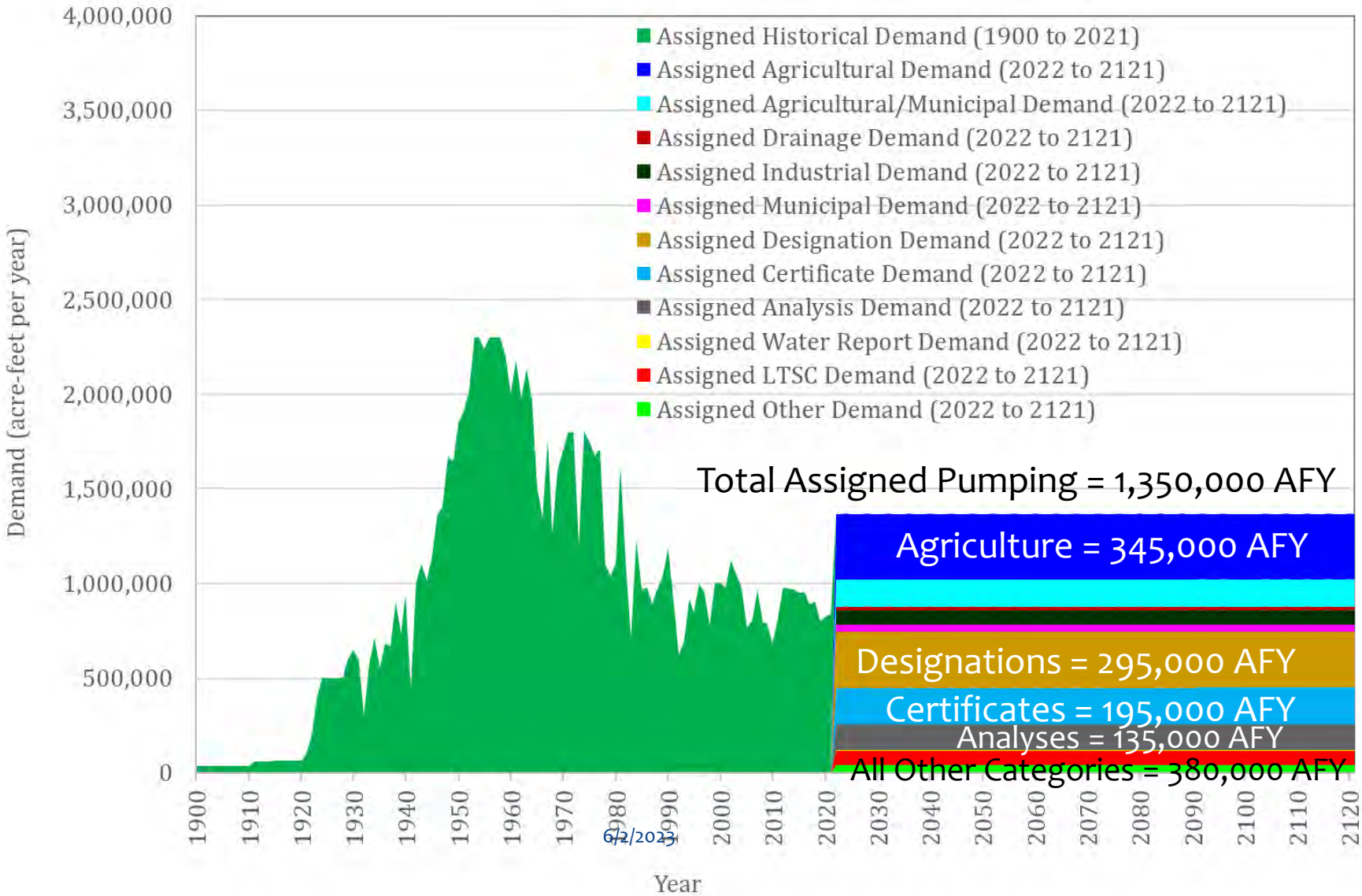
OUTFLOWS (DEMAND)

Outflow Component	Amount (Acre-Feet per Year)
Existing Pumping	965,000
Riparian	15,000
Boundary Underflow	5,000
Issued Pumping	400,000
Total Outflows	**1,385,000**

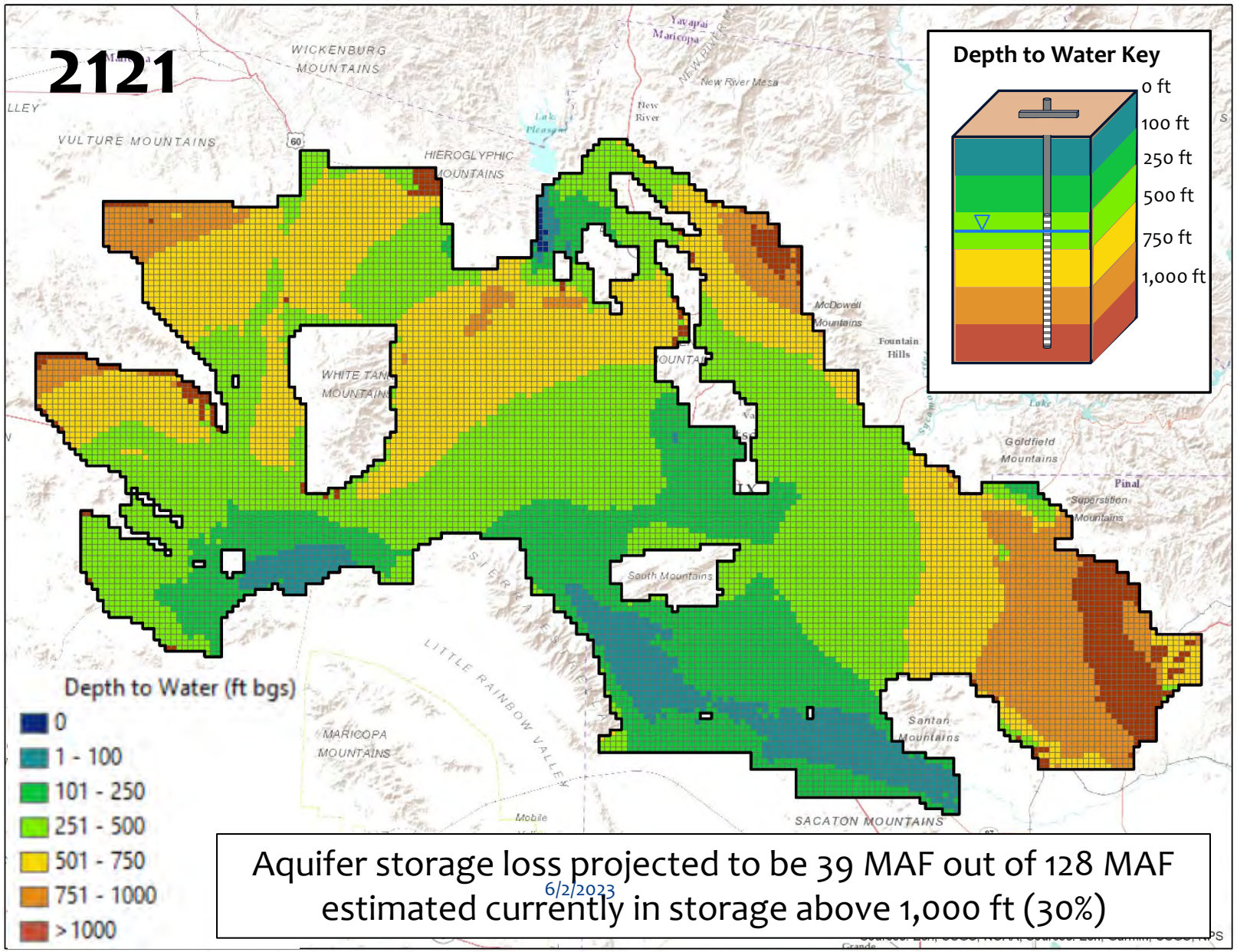


Outflows > Inflows by a factor of 1.4

Assigned Pumping in Projection

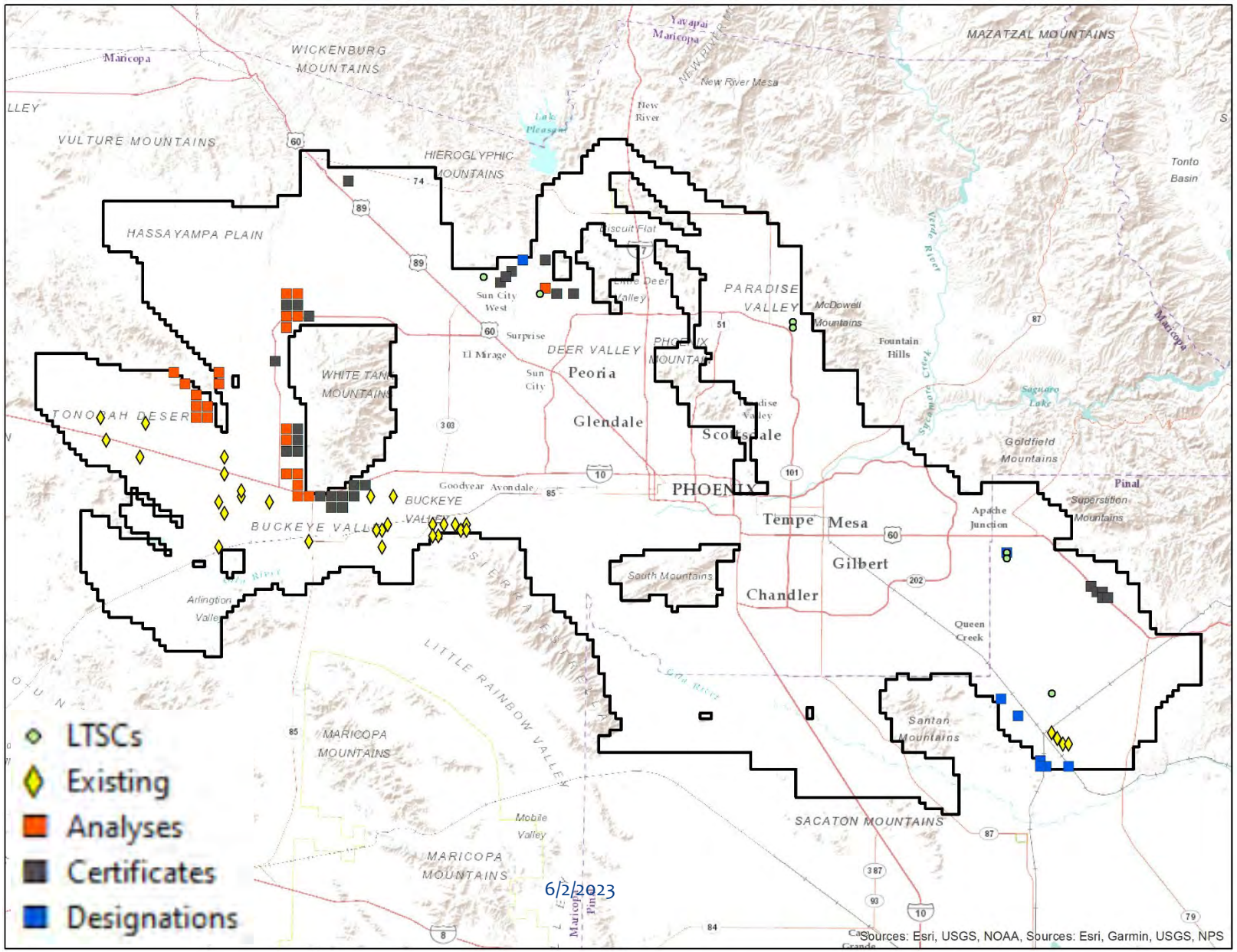


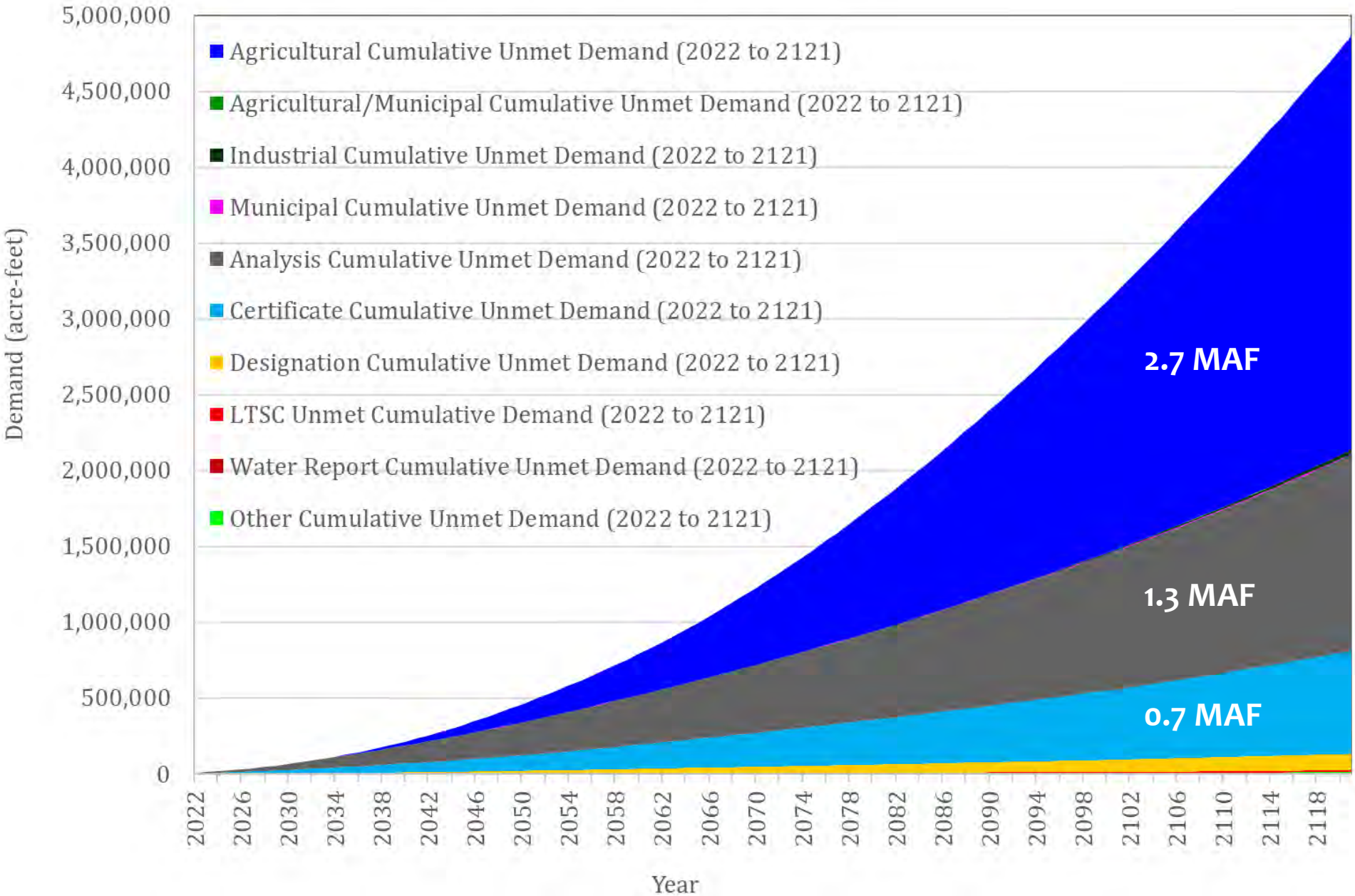
Simulated Depth to Water after 100 Years



Aquifer storage loss projected to be 39 MAF out of 128 MAF estimated currently in storage above 1,000 ft (30%)

Unmet Demand



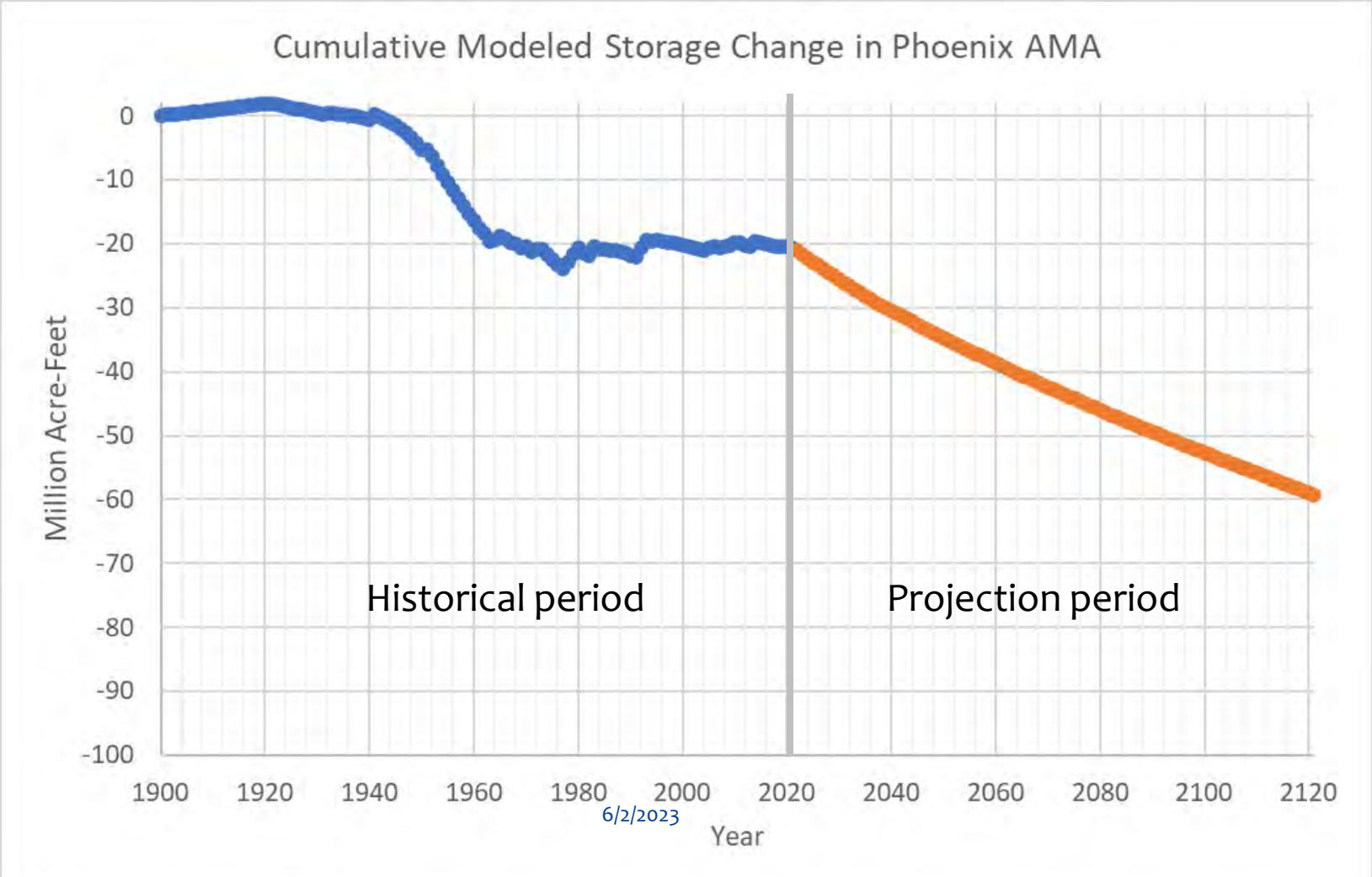

Agricultural Cumulative Unmet Demand (2022 to 2121)
Agricultural/Municipal Cumulative Unmet Demand (2022 to 2121)
Industrial Cumulative Unmet Demand (2022 to 2121)
Municipal Cumulative Unmet Demand (2022 to 2121)
Analysis Cumulative Unmet Demand (2022 to 2121)
Certificate Cumulative Unmet Demand (2022 to 2121)
Designation Cumulative Unmet Demand (2022 to 2121)
LTSC Unmet Cumulative Demand (2022 to 2121)
Water Report Cumulative Unmet Demand (2022 to 2121)
Other Cumulative Unmet Demand (2022 to 2121)
2.7 MAF
1.3 MAF
0.7 MAF
Demand (acre-feet)
5,000,000
4,500,000
4,000,000
3,500,000
3,000,000
2,500,000
2,000,000
1,500,000
1,000,000
500,000
0
2022
2026
2030
2034
2038
2042
2046
2050
2054
2058
2062
2066
2070
2074
2078
2082
2086
2090
2094
2098
2102
2106
2110
2114
2118
Year

Unmet Demand After 100 Years

- Total future demand ≈ 140 MAF over 100 years
- Unmet demand from:
  - Existing ag = 2.7 MAF
  - Analyses = 1.3 MAF
  - Certificates = 0.7 MAF
  - Designations = 0.1 MAF

All unmet demand = 4.9 MAF
(4% of total)

Cumulative Modeled Storage Change



Key Takeaways (1)

- AWS Program is working as intended
  - We have time to make water management decisions
  - This is an inflection point
- Projected future outflows exceed projected future inflows by a factor of 1.4
- At the end of 100 years, depth to water in areas near the edges of the groundwater basin is projected to exceed 1,000 ft or hit bedrock
- Unmet demand in existing and AWS wells is projected to be 4.9 MAF over the 100-year period (4% of total demand)

Key Takeaways (2)

- Existing homes built pursuant to the AWS program have secure water supplies
- Significant volumes of groundwater and other water supplies are available for continued growth
- Water providers in the Phoenix AMA have diverse water supplies and are not solely reliant on groundwater
- People are not running out of water

MEMORANDUM

To:	Governor's Regulatory Review Council
From:	Nicole D. Klobas, Chief Counsel, ADWR
Date:	11/8/2024
Re:	**Response to Council Questions and Public Comments related to the ADWR Notice of Final Rulemaking regarding an Alternative Path to Obtain a Designation of Assured Water Supply (ADAWS)**

The Arizona Department of Water Resources (ADWR) respectfully seeks to respond to certain misunderstandings that became apparent during discussion of the ADWR's Notice of Final Rulemaking regarding an alternative path to obtaining a designation of assured water supply (ADAWS rules) at the October 29, 2024 Study Session of the Governor's Regulatory Review Council (Council). While representatives of ADWR will continue to be available at any subsequent meeting or study session to respond to any further questions from the Council or public comments, ADWR provides the following information and the attached documents in response to the discussion on October 29.

For a general description of the ADAWS rules and their purpose, please refer to the memo ADWR submitted to the Council on October 31, 2024[1], and the Preamble to the Notice of Final Rulemaking, pages 2-8.

1. **ADWR did not rely on groundwater models to develop the ADAWS rules.**

During the discussion and public comments on the ADAWS rules at the October 29 Study Session, at least one commenter asserted that the ADAWS rules fail to "disclose[ ] a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's justification for the rule," as required by A.R.S. § 41-1052(D)(8). While the preamble to the ADAWS rules mentions ADWR's groundwater models for the Phoenix Active Management Area (AMA) and the Pinal AMA, these models are included in a description of past events and conditions that existed *long before* the discussions that led to the development of the ADAWS rules.

In fact, the water providers that have expressed interest in the ADAWS pathway have been unable to obtain a designation of assured water supply (designation) in part because of the same legacy groundwater pumping that ADAWS would address over time via the 25% "offset" requirement discussed below. These providers were not able to obtain a designation before the release of the current groundwater models in the Phoenix and Pinal

[1] https://www.azwater.gov/sites/default/files/2024-11/2024_10-31_ADWR_Memo_to_GRRC_re_ADAWS.pdf

AMAs and, without ADAWS, would probably not be able to obtain a designation even if the unmet demand shown in such groundwater models were to be resolved. The challenges with achieving a designation are well documented in policy work and discussions from the Governor's Water Augmentation, Innovation, and Conservation Council convened under former Governor Doug Ducey.[2]

As ADWR has acknowledged in its responses to public comments within the preamble, the groundwater models in question remain subject to change and applicants may continue to propose changes to groundwater models in support of their applications pursuant to A.A.C. R12-15-716(B). *See* Preamble at p. 12.

The models themselves are not relevant to any of the criteria set forth in the ADAWS rules. While some commenters have attempted to link the 25% offset requirement in proposed subsection (H) to results from the Phoenix AMA groundwater model, as discussed in Part 2 of this memo, the requirement to reduce existing groundwater use is not linked to any groundwater model finding. Rather, the 25% offset requirement is effectively a tradeoff for not directly demonstrating that a volume of water is physically available. Because the water provider is committing to use less groundwater in the long term by replacing some groundwater with alternative supplies, the water provider can include a prescribed volume of groundwater in its designation application without relying on any groundwater model.

Moreover, groundwater is a finite resource in Arizona. Even if the assumptions in a groundwater model are modified and the results show physical availability of groundwater for one or more assured water supply applications, eventually (likely soon) the model would show that no additional groundwater would be physically available. Therefore, there would still be a need for a path to obtain a designation without relying on a groundwater model to demonstrate physical availability.

Finally, and most importantly, we have heard from developers, business leaders, cities and towns, and water providers alike that there is an immediate need for additional housing in both the Phoenix and Pinal AMAs. As mentioned above, ADWR has had meetings and conversations with water providers who are actively interested in a path to designation *without* reliance on a groundwater model to demonstrate physical availability of groundwater to serve their existing customers. Whether that is because the providers do not want to bear the expense of hiring a consultant to modify a groundwater model, because they do not want to risk the time required for model modification and review by ADWR,

[2] Issue Brief #4, *Groundwater in the Assured Water Supply Program*, Governor's Water Augmentation, Innovation, and Conservation Council Post-2025 AMAs Committee, **Attachment A**.

or because they agree with the current groundwater model results, those water providers seek this alternative path to designation – without relying on a groundwater model to show physical availability for existing groundwater uses.

For all of the reasons above, ADWR accurately stated in item 8 of the Preamble that there is no study relevant to the ADAWS rules.

2. **ADWR based the requirement to reduce existing groundwater use by 25% of each new alternative supply on discussions in the Governor's Water Policy Council and its Assured Water Supply Committee.**

In May 2023, Governor Hobbs charged the Governor's Water Policy Council to provide recommendations regarding substantial water policy issues in the State. Regarding the Assured Water Supply program, Governor Hobbs directed the Council to:

> Review and make recommendations 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, and
> - ensure future growth is not reliant on mined groundwater.[3]

Members of the Council served on two committees, one of which was the Assured Water Supply Committee (AWS Committee). In addition to the objective described above, the AWS Committee was directed to recommend policies subject to the following principles:

> - Proposals must protect the strength and integrity of the Assured Water Supply program.
> - Proposals should enable future growth without reliance on mined groundwater.
> - Proposals may not reduce the 100-year requirement or increase the depth to which groundwater may be pumped.
> - Proposals must ensure there is water before growth.
> - Proposals must protect consumers.[4]

[3] Governor's Water Policy Council Meeting Presentation, May 17, 2023, slide 13 (**Attachment B** at PDF page 27).
[4] AWS Committee Meeting Presentation, June 27, 2023, slide 16 (**Attachment B** at PDF page 58).

The AWS Committee considered various proposals relating to designations and certificates of assured water supply, and based on those discussions, as well as informal discussions with stakeholders, ADWR presented a proposal for an "Alternative Pathway to Designation," which sought to address certain challenges previously discussed by the AWS Committee:

- The commingling issue associated with certificates and alternative water supplies
- Unmet demand and/or exceedances of depth-to-water limit in AMA model
- Incorporating new, non-groundwater supplies into a provider's water portfolio
- Facilitating near-term growth while future infrastructure is under development
- Creating a long-term benefit for the aquifer.[5]

This concept is largely consistent with the ADAWS Rules, except that the September 2023 proposal assumed an offset to the grandfathered groundwater volume equivalent to 30% of any new alternative supply, which ADWR has since reduced to 25%. ADWR staff also presented a slide showing that the ADAWS concept was intended to result in a substantial reduction in groundwater use over time, relative to the status quo.[6] ADWR also noted that the offset of groundwater with a portion of any new alternative supplies would "facilitate an incremental transition away from groundwater over time."[7]

The AWS Committee members had a robust discussion of the proposal at the meeting on September 27, 2023, including a discussion of the 30% offset value. While some members argued that it was too high, others pointed out that the offset was a key component because ultimately, groundwater use would be reduced.[8]

At the following AWS Committee meeting, ADWR reviewed the proposal and presented answers to questions from Committee members and stakeholders. Several of the questions pertained to the volume of groundwater that a water provider would continue to use, and

[5] AWS Committee Meeting Presentation, September 27, 2023, slide 11 (**Attachment B** at PDF page 89).
[6] AWS Committee Meeting Presentation, September 27, 2023, slide 13 (**Attachment B** at PDF page 91).
[7] AWS Committee Meeting Presentation, September 27, 2023, slide 16 (**Attachment B** at PDF page 94).
[8] AWS Committee Member Comment Notes, September 27, 2023 (**Attachment B** at PDF pages 122).

whether that volume would be reduced, how the 30% offset would operate, and ensuring that new supplies are acquired to replace groundwater use as well as serve new growth.[9]

The proposal was then moved forward to the Governor's Water Policy Council for discussion.[10] The Council discussed the proposal and supported it, though members had differing viewpoints on the 30% offset value, with some arguing that it was too high and at least one member arguing it should be as high as 50%.[11] Ultimately, the Council recommended the proposal to Governor Hobbs, including a 30% offset value.[12]

In recognition of the comments from some members of the Governor's Water Policy Council regarding the 30% offset value, suggesting either an increase or a substantial decrease in the value, ADWR drafted the proposed rule language to include an offset to the grandfathered groundwater volume equivalent to 25% of each new alternative supply. ADWR recognized that the likely applicants will have substantial volumes of existing groundwater use (and approved certificate volumes) that will be grandfathered in via the ADAWS rules, on the order of 30,000 acre-feet per year or more. For context on the significance of these groundwater volumes, Arizona's largest municipal water provider, the City of Phoenix, has 36,995 acre-feet per year of groundwater included in its designation.

Meanwhile, the volumes of each new alternative supply are likely to be in the range of 2,000 to 5,000 acre-feet per year. Therefore, the 25% "offset" volume will amount to 500 to 1,250 acre-feet per year, or a reduction in groundwater use of approximately 1.7% to 4.1% per year for a provider with a 30,000 acre-foot grandfathered groundwater volume.

For comparison, the Management Plans for both the Phoenix and Pinal AMAs require that large providers have no more than a 10% rate (relative to their entire water supply) of lost and unaccounted for water – meaning losses due to leakage, seepage, metering our accounting errors, etc.[13] For a provider serving 33,750 acre-feet per year (28,750 acre-feet

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[9] AWS Committee Meeting Presentation, October 17, 2023, slides 20-27 (**Attachment B** at PDF pages 144-151).
[10] Governor's Water Policy Council Member Comment Notes, October 27, 2023 (**Attachment B** at PDF page 166).
0.[11] Id.
[12] Letter from Tom Buschatzke, Director of ADWR, to Katie Hobbs, Governor of the State of Arizona, November 29, 2023, regarding the Governor's Water Policy Council Recommendations, p. 4 (**Attachment C** at PDF page 173).
[13] *See* Fourth Management Plan for the Pinal Active Management Area, p. 5-15 (**Attachment D** at PDF page 185); Fourth Management Plan for the Phoenix Active Management Area, p. 5-16 (**Attachment D** at PDF page 188); Fifth Management Plan for the Pinal Active Management Area, pp. 5-10 through 5-11 (**Attachment D** at PDF pages 191-192); Fifth Management Plan for the Phoenix Active Management Area, p. 5-11 (**Attachment D** at PDF page 195).

of groundwater and 5,000 acre-feet of an alternative water supply) that would amount to 3,375 acre-feet of water that may be "lost" to the system each year – nearly triple the 1,250 acre-foot reduction in groundwater use applied to the grandfathered groundwater volume under the ADAWS rules. The 25% offset will likely impact a volume of groundwater that is a fraction of what is permissible to lose through leakage losses and is not an undue burden.

Another key consideration related to the 25% offset component is that, upon meeting the relevant assured water supply criteria, effluent projections associated with future demands can be incorporated into a water provider's portfolio, potentially at volumes that will match the 25% offset requirement.

For example, if a new alternative supply of 1,000 acre-feet is acquired by the water provider and added to the designation, the required 25% offset will amount to a reduction of 250 acre-feet from the provider's grandfathered groundwater volume. Additionally, the water provider applicant may include an additional effluent supply associated with the effluent produced from the additional water use. While effluent production rates are evaluated on a case-by-case basis, effluent production generally ranges between 20 - 40% of overall water use; in this example, 200 – 400 acre-feet per year. As such, the 25% offset requirement is aligned with current best practices for water recycling and does not impose any undue burden upon water providers to bring or acquire "extra" water supplies.

ADWR has crafted the ADAWS rules to provide an alternative path to obtaining a designation for those water providers who elect to do so, without demonstrating physical availability of groundwater through a groundwater model and without replacing 100% of their groundwater supplies with new alternative supplies. This alternative path "imposes the least burden and cost … necessary to achieve the underlying regulatory objective[s]" (A.R.S. § 41-1052(D)(3)) of "protecting consumers and aquifers" as required by Governor Hobbs in her objective for the Governor's Water Policy Council, and "creating a long-term benefit for the aquifer," as discussed by members of the AWS Committee prior to the development of the proposal. ADWR has reduced the offset of groundwater use from 30% to 25% of each new alternative supply, to ensure a minimal reduction in long-term groundwater use as a substitute for demonstrating that the groundwater will be physically available through a groundwater model.

3. **The Home Builders Association of Central Arizona actively participated in the development of the ADAWS rules and met with the Director of ADWR as recently as October 21, 2024.**

During the October 29 study session, Spencer Kamps spoke on behalf of the Home Builders Association of Central Arizona (HBACA) and asserted that ADWR would not meet with him to discuss his concerns. This claim was also included in several comment letters submitted to GRRC. In fact, Mr. Kamps and his representatives participated in each of the meetings of the Governor's Water Policy Council and its AWS Committee described above, including the discussions of the alternative path to designation that was incorporated into the ADAWS rules. HBACA also submitted comments during the informal stakeholder process regarding draft rule language, as well as during the public notice period provided for in ADWR's Notice of Proposed Rulemaking. Additionally, Director Buschatzke met with Mr. Kamps as recently as October 21, 2024, regarding the ADAWS rules and other issues related to the Assured Water Supply program.[14] ADWR has consistently considered and responded to HBACA's comments and incorporated changes where possible while achieving the regulatory objective. Assertions that ADWR has refused to meet with any stakeholder to discuss the ADAWS program are false.

[14] **Attachment E** (documentation related to October 21, 2024 meeting).

ATTACHMENT A

ISSUE BRIEF #4

GROUNDWATER IN THE ASSURED WATER SUPPLY PROGRAM

ISSUE STATEMENT

Large parts of the Active Management Areas (AMAs) remain groundwater-dependent due to a lack of renewable water supplies and infrastructure, which creates uncertainties as groundwater supplies become more limited.

- What are the role and consequences of the use of groundwater to support new growth after 2025?
- What are the risks to homeowners whose physical groundwater supplies may be depleted after the regulatory Assured Water Supply 100-year timeframe?
- What roadblocks prevent access to renewable supplies and infrastructure in these groundwater-dependent areas?

BACKGROUND

The Assured and Adequate Water Supply Program was designed as a consumer protection law and has evolved into a significant tool for sustaining the state's economic health by preserving groundwater resources and promoting long-term water supply planning.[1] The Assured Water Supply (AWS) Rules for the State's AMAs were developed with stakeholder input over many years, ultimately adopted by the Arizona Department of Water Resources (ADWR) in 1995[2], and subsequently modified over time. The AWS Program provides consumer and economic protection by requiring a demonstration of a 100-year water supply to serve a new development before lots can be sold in the AMAs.

An AWS can be demonstrated through either a Designation of AWS (Designation) or Certificate of AWS (Certificate). To secure either a Certificate or Designation, a 100-year supply of water must be demonstrated to satisfy the needs of the proposed use, either for an applicant subdivision in the case of a Certificate, or for all of the demands within the service area of a water provider who seeks a Designation. The Director of ADWR must review a Designation at least every 15 years to determine whether the Designation should be modified or revoked.[3] The Director does not typically reevaluate a Certificate. Landowners also have the ability to apply for an Analysis of AWS to partially satisfy the regulatory criteria, prior to obtaining a Certificate. Analyses are typically used to prove that water will be physically available for master planned communities.[4] If an Analysis is issued for groundwater, it reserves a specific volume of water for 10 years (for purposes of other AWS reviews) only for the specific development plan or plat that is the subject of the Analysis.[5]

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[1] https://new.azwater.gov/aaws.
[2] The 1995 rules did not include provisions specific to consistency with the management goal of the Santa Cruz Active Management Area (SCAMA), which was created by the Legislature in 1994 (A.R.S. § 45-411.04). AWS rules have not yet been modified to address consistency with the management goal of the SCAMA, and it is not addressed in this Issue Brief.
[3] A.A.C. R12-15-711.
[4] See *Application for an Analysis of Assured Water Supply*, https://new.azwater.gov/sites/default/files/media/AnalysisofAssured_REV%202-20-2020.pdf.
[5] A.A.C. R12-15-703. Analyses may be renewed in 5-year increments if certain criteria are met. *Id.*

An AWS for either a Certificate or Designation can be demonstrated based entirely or partially on groundwater. Two of the requirements for demonstrating an AWS are that the water for the proposed Certificate or Designation is physically available for 100 years and that the use of the water is consistent with the management goal of the AMA. Physical availability of groundwater is the regulatory measure of an applicant's ability to demonstrate sufficient groundwater for 100 years. To satisfy the physical availability requirement for groundwater, an applicant must show that its groundwater withdrawals would not cause the depth to groundwater to exceed a regulatory limit (1,000 feet below the land surface in the Phoenix, Tucson, Prescott, and Santa Cruz AMAs; 1,100 feet in the Pinal AMA) and would not negatively affect previously issued AWS Determinations[6] and existing municipal uses.[7]

The requirement that projected groundwater use be consistent with the management goal may be met if withdrawals are made pursuant to the groundwater allowance or through the use of pledged extinguishment credits (which are added to the groundwater allowance balance).[8] More detail on these types of groundwater withdrawals is provided in the *Unreplenished Groundwater Withdrawals Issue Brief*.

In the Phoenix, Pinal and Tucson AMAs, the requirement that projected groundwater use be consistent with the management goal may also be satisfied if the subdivision or water provider becomes a member of the Central Arizona Groundwater Replenishment District (CAGRD). The Arizona Legislature authorized the CAGRD as a responsibility of the Central Arizona Water Conservation District (CAWCD), which operates the Central Arizona Project (CAP). Since CAWCD encompasses only Maricopa, Pinal and Pima Counties, the CAGRD does not serve the Prescott or Santa Cruz AMAs. The CAGRD replenishes *excess* groundwater[9] pumped by or delivered to its members, after that volume is annually calculated and reported to the CAGRD. The CAGRD must submit a Plan of Operation every ten years to ADWR for review and approval. The Director of ADWR must determine whether the Plan is consistent with achieving the management goals of the AMAs in CAGRD's service area.[10]

ISSUE DESCRIPTION

Even with the benefits that followed the 1980 Groundwater Management Act, there are numerous pressures placed on groundwater in the AMAs, many of which have been identified in the *Unreplenished Groundwater Withdrawals, Hydrologic Disconnect,* and *Exempt Wells* Issue Briefs. The AWS Program has been a significant factor in encouraging municipal water providers to reduce groundwater use in the AMAs over the last 25 years. In the context of all the challenges identified by the Post-2025 AMAs Committee, the State should evaluate the AWS Program and consider how it can be improved well beyond 2025. Three main questions related to groundwater use under the AWS Program provide a starting point for evaluating whether the AWS Program could better provide consumer and economic protection and better aid in achieving the AMA management goals.

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[6] A.A.C. R12-15-701(31): "Determination of assured water supply" means a certificate, a designation of assured water supply, or an analysis of assured water supply.

[7] A.A.C. R12-15-716 and ADWR Substantive Policy Statement: *Hydrologic Studies Demonstrating Physical Availability of Groundwater for Assured and Adequate Water Supply Applications* (AWS 7).

[8] A.A.C. R12-15-722. The Groundwater Allowance is a volume of groundwater which may be calculated for each AWS Certificate or Designation according to rules specific to each AMA. *See Unreplenished Groundwater Withdrawals Issue Brief.*

[9] "Excess groundwater" is any amount of pumped groundwater beyond what is permitted by the AWS rules. With a few exceptions, this generally means the volume of groundwater pumped that exceeds the groundwater allowance and/or extinguishment credits of a CAWS or DAWS. More detail on CAGRD operations is provided in the *CAGRD Replenishment and Water Supplies Issue Brief*.

[10] A.R.S. § 45-576.03.

What are the role and consequences of the use of groundwater to support new growth after 2025?

Under the current regulatory structure, groundwater will continue to be utilized to serve subdivisions that fall under the jurisdiction of the AWS Program. New Certificates or Designations of AWS may utilize groundwater that is consistent with the management goal through the use of Extinguishment Credits, the Groundwater Allowance, or membership in the CAGRD. As groundwater uses expand to serve new development, there is a corresponding reduction to the volume of groundwater that exists in the aquifer, some of which is replenished. In the Phoenix, Pinal, and Tucson AMAs, localized groundwater depletion can be mitigated when replenishment occurs in close proximity to withdrawals.[11]

Groundwater withdrawals by all sectors will impact the ability of new AWS applicants to demonstrate physical availability of groundwater. In the Pinal AMA, ADWR modeling shows insufficient groundwater is physically available to meet the demands of previously issued Analyses, Certificates and Designations over the 100-year modeling period. If left unresolved, additional AWS applications using groundwater or stored water recovered outside the area of impact will not be approved.[12] The Prescott AMA faces similar challenges, with an increasingly reduced volume of groundwater physically available for new AWS Determinations.[13] Other AMAs are also likely to face reduced physical availability of groundwater after 2025.

In addition to curtailing the ability to subdivide lands for new development, continued groundwater reliance may lead to other adverse impacts. Unless steps are taken to reduce or ameliorate impacts of groundwater drawdown, depths to water in the AMAs would decline, resulting in increased land subsidence, decreased aquifer storage, and the potential deterioration of water quality.[14] The degree to which these adverse impacts may occur when groundwater levels fall to depths of 1,000' below land surface is also unknown.[15] ADWR is in the process of updating its groundwater models for the Phoenix and Tucson AMAs, which should provide better projections of the groundwater supplies in these two AMAs.

What are the risks to homeowners whose physical groundwater supplies may be depleted after the regulatory Assured Water Supply 100-year time frame?

While the water demands of all previously issued Certificates or Designations must be incorporated in future AWS applications, groundwater pumping reduces the amount of groundwater available for all existing municipal water providers serving certificated lands or designated service areas through time. These impacts may be more likely to occur where pumping and replenishment or storage and recovery are hydrologically disconnected. Even with an AWS Determination, other factors, including withdrawals

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[11] The CAGRD has the flexibility to replenish in various locations to fulfill its replenishment responsibilities but is not required to replenish within the area of impact of its members' groundwater pumping. The CAGRD is not responsible for ensuring groundwater physical availability for its members, but rather to maintain its members' consistency with the AMA management goal.

[12] 2019 Pinal Model and 100-year Assured Water Supply Projection Technical Memorandum, October 11, 2019, http://infoshare.azwater.gov/docushare/dsweb/Get/Document-11793/2019_Pinal_Model_and_100-Year_AWS_Projection-Technical_Memorandum.pdf; Pinal Model 2019 Update Presentation, November 1, 2019, Slide 53, https://new.azwater.gov/sites/default/files/20191101_Pinal_Model_2019_Presentation.pdf.

[13] Prescott AMA 4MP, Section 1.5, page 1-4.

[14] "Ground-Water Depletion Across the Nation." USGS, 2003. https://pubs.usgs.gov/fs/fs-103-03/JBartolinoFS(2.13.04).pdf.

[15] Phoenix 3MP – Section 8.9; Previous scholarship has demonstrated that the 1,000 foot depth limit was not based upon hydrological or technical considerations (see, Rita Pearson Maguire, *Patching the Holes in the Bucket: Safe Yield and the Future of Water Management in Arizona,* 49 Ariz. L. Rev. 361 (2007)).

from groundwater users not subject to the AWS requirements, may also affect the availability of groundwater supplies during the 100-year regulatory timeframe of an AWS Certificate or Designation. Ultimately, homeowners rely on the water provider for service, with an expectation of consumer protection by local or state government, no matter the status of the AWS.

What roadblocks prevent access to renewable supplies and infrastructure in these groundwater-dependent areas?

Groundwater-dependent municipal water providers face obstacles in their ability to acquire renewable water supplies, to become Designated, to extend their existing Designations, or to reduce or eliminate their reliance on the groundwater. There are 276 undesignated municipal water providers in the five AMAs. Since 2000, no undesignated municipal water providers have successfully been newly Designated in the Phoenix AMA, which illustrates the difficulty of building a renewable water supply portfolio and reducing dependence on groundwater.

One of the primary challenges to reducing groundwater reliance is the lack of available renewable supplies. With fewer renewable supplies available for acquisition, competition for those supplies will increase in the future. The 2019 *Long-Term Water Augmentation Options for Arizona* report concluded that, for the most part, Arizona's water augmentation options have already been identified and additional water supplies coming from outside of Arizona are not expected except for the potential opportunity of a desalination project with Mexico.[16] The report also emphasized the importance of working with the water resources we have to meet our future needs.[17]

Additional obstacles faced by groundwater-dependent municipal water providers include the lack of institutional structures to facilitate the acquisition of renewable supplies, constraints on the marketability of surface water rights, costs of such supplies, certain restrictions imposed on private utilities by the Arizona Corporation Commission, resistance to and/or limitations on water transfers, obstacles to accessing infrastructure to move renewable supplies, and the need to acquire permanent renewable water supplies well in advance of actual water use as emphasized by the AWS Rules. These obstacles compound an overarching challenge for water providers to finance renewable water supplies, particularly those with smaller customer bases or greater geographical distance from augmentation opportunities. These challenges are even more acute in the Pinal, Prescott and Santa Cruz AMAs.

The recent effort by the Town of Queen Creek to acquire renewable supplies to obtain a Designation and eliminate the replenishment obligation of the CAGRD member lands it serves, demonstrates the difficult financial and logistical hurdles municipal water providers face. Understanding the Town's challenges and motivations, as well as those of the City of Buckeye, which has also pursued for years a Designation, could deepen the understanding of these issues and present opportunities for improvement moving forward.

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[16] *Long-Term Water Augmentation Options for Arizona*, Prepared for the Long-Term Water Augmentation Committee of the GWAICC by Carollo Engineers, Montgomery & Associates and WestLand Resources, Inc., p. 2, https://new.azwater.gov/sites/default/files/Long-Term%20Water%20Augmentation%20Options%20final.pdf.
[17] *Ibid.*

ATTACHMENT B

Governor’s Water Policy Council Meeting Presentation, May 17, 2023

Governor's Water Policy Council

May 17, 2023

Meeting Logistics

- Please note that this meeting is being broadcast via webinar and is being recorded.
- The meeting recording and materials will be posted to the Council's webpage (https://new.azwater.gov/gwpc).
- Only members of the Council will be able to unmute themselves to participate in the meeting.
- *Technical issues? Please call the ADWR Help Desk at* ***602-771-8444*** *or email tickets@azwater.gov.*

I. Welcome & Opening Remarks

Governor Katie Hobbs

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I. Welcome & Opening Remarks

Director Tom Buschatzke, Chair

II. Introductions

III. Focus Areas & Objectives

Focus: Assured Water Supply

The 1980 Groundwater Management Act, and the Assured Water Supply Program in particular, have enabled and guided responsible growth in an arid environment. The Program:

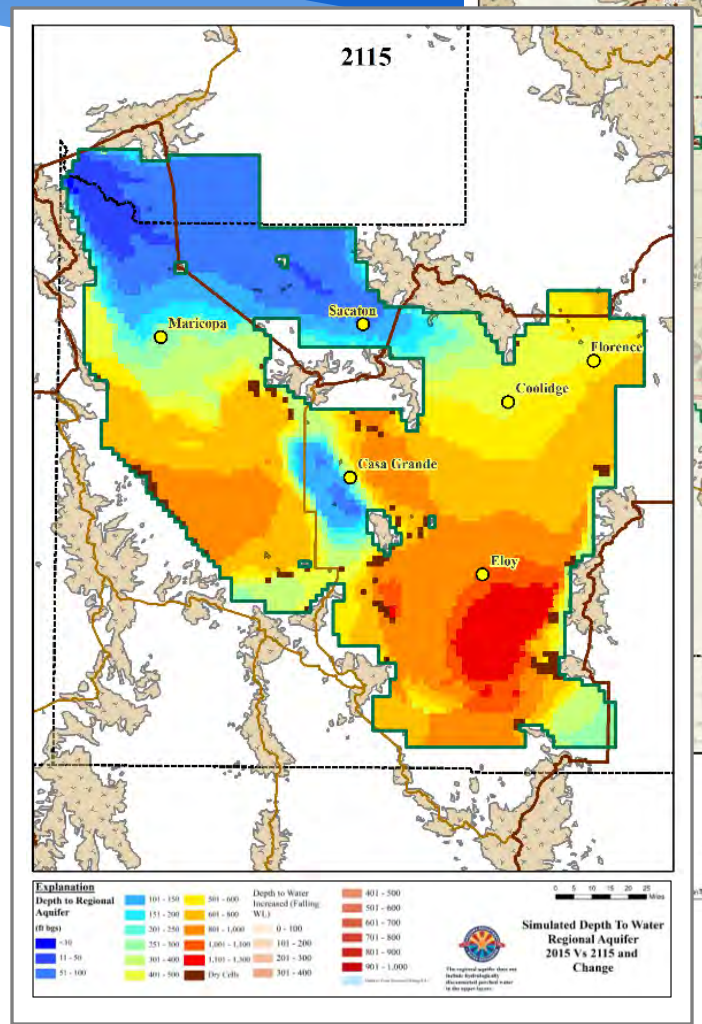
- Provides consumer protection, ensures sustainable water supplies for new homes
- Drives innovation, collaboration, and creativity
  - recharge
  - replenishment
  - banking
  - investment in renewable supplies & infrastructure
  - exchanges
  - reuse
  - demand reductions

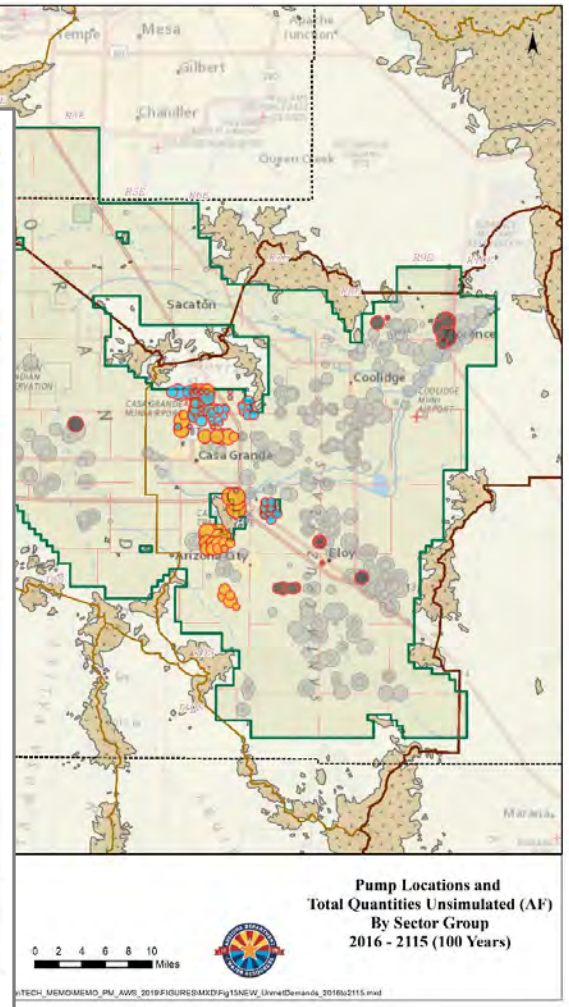
Assured Water Supply Modeling

- The Assured Water Supply Program requires the Department to evaluate available supply for 100 years before permitting additional future growth.
- Models are updated to utilize the best available science and are constructed to meet the rules, policies, and requirements of the Assured Water Supply Program.
- The latest modeling projections are making it clear there are challenges ahead that must be addressed.
- The program is doing what it was intended to do, requiring us to plan for water supplies ahead of growth.

Pinal Model (2019)

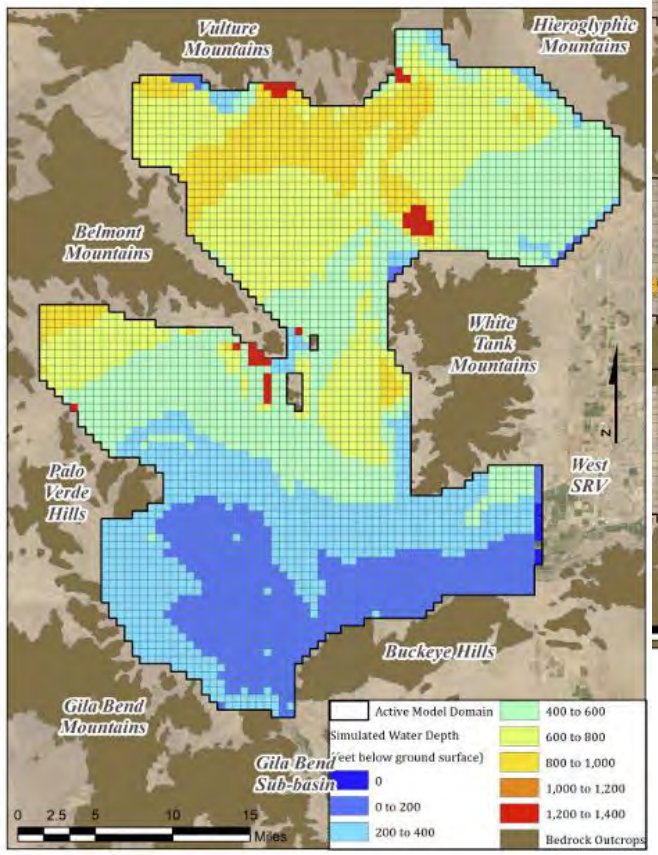
- **Unmet demand after 100 years:**
  - Existing wells = 5.8 MAF
  - Analyses = 1.1 MAF
  - Certificates = 0.3 MAF
  - Designations = 0.6 MAF
  - LTSC = 0.3 MAF
- **Total unmet demand after 100 years exceeds 8 MAF**

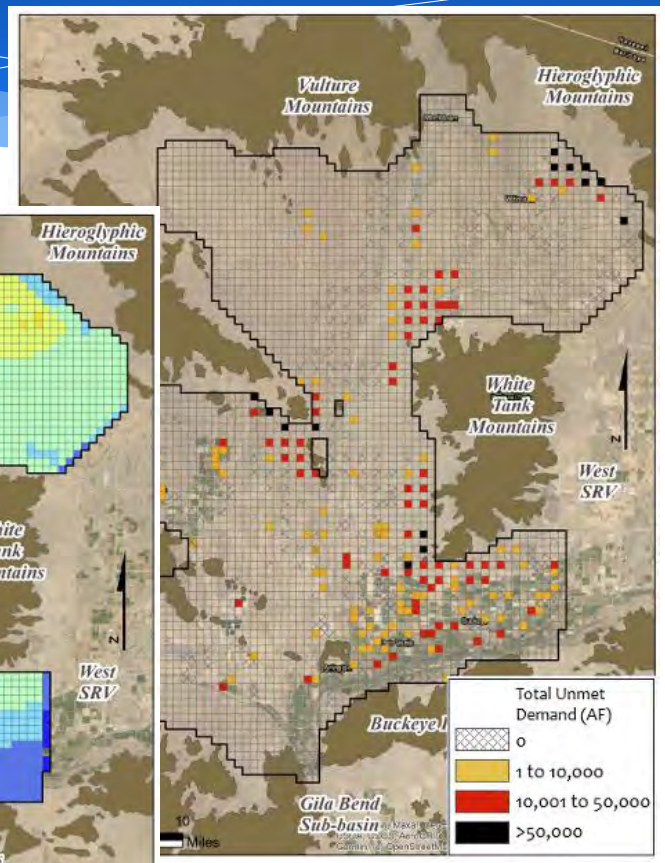




Hassayampa Sub-basin Model (2023)

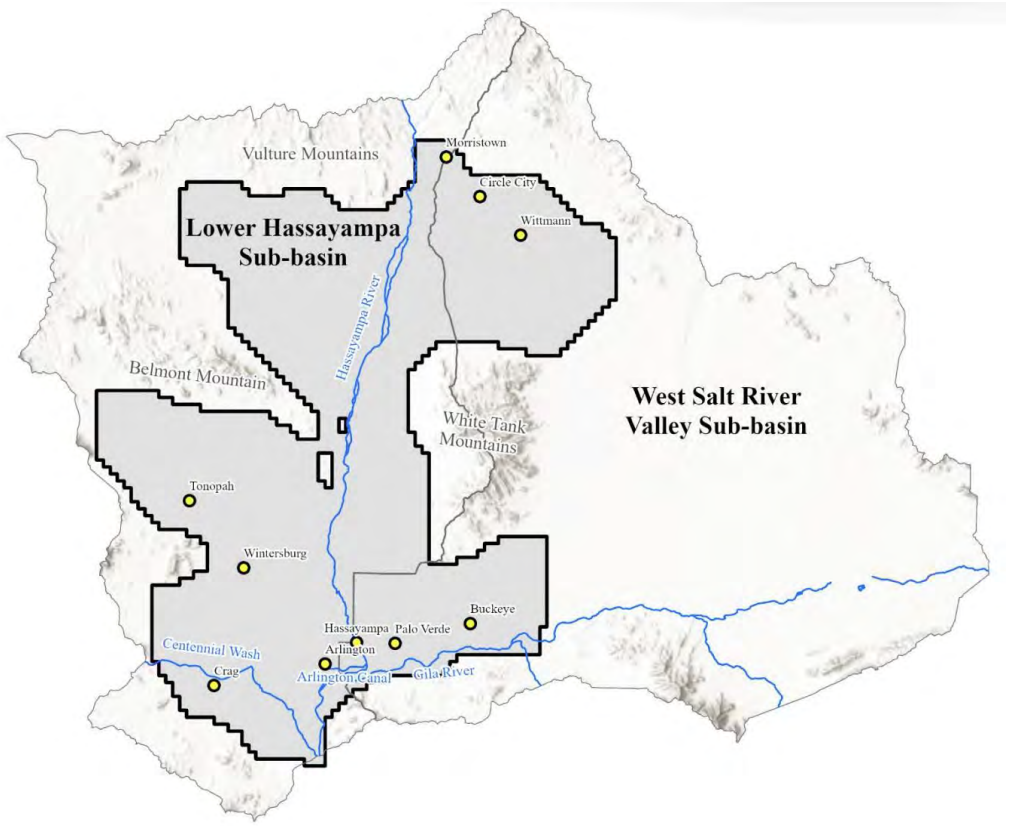
- **Unmet demand after 100 years**
  - Existing wells = 0.9 MAF
  - Analyses = 2.2 MAF
  - Certificates = 1.3 MAF
  - LTSC = 0.1 MAF
- **Total unmet demand after 100 years**
  - **4.4 MAF**
- Depth to water exceeds 1,000 ft bls and/or hits bedrock in the central and northern parts of the sub-basin





"The days of utilizing native groundwater for development in Pinal are over, it's done."

- Director Buschatzke, June 2021



"ADWR previously worked with stakeholders in the West Valley that are subject to the Assured Water Supply program to seek solutions to the shortfall projected in the Hassayampa model."

"As Governor Hobbs signaled in her State of the State speech, it is time to include legislators, the business community and all constituencies to address the challenges attendant to the Assured Water Supply program in the Hassayampa Basin and for all the water management challenges facing Arizona."

- Director Buschatzke, January 2023

Objective: AWS Review & Recommendations

Objective:

Review and make recommendations 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:

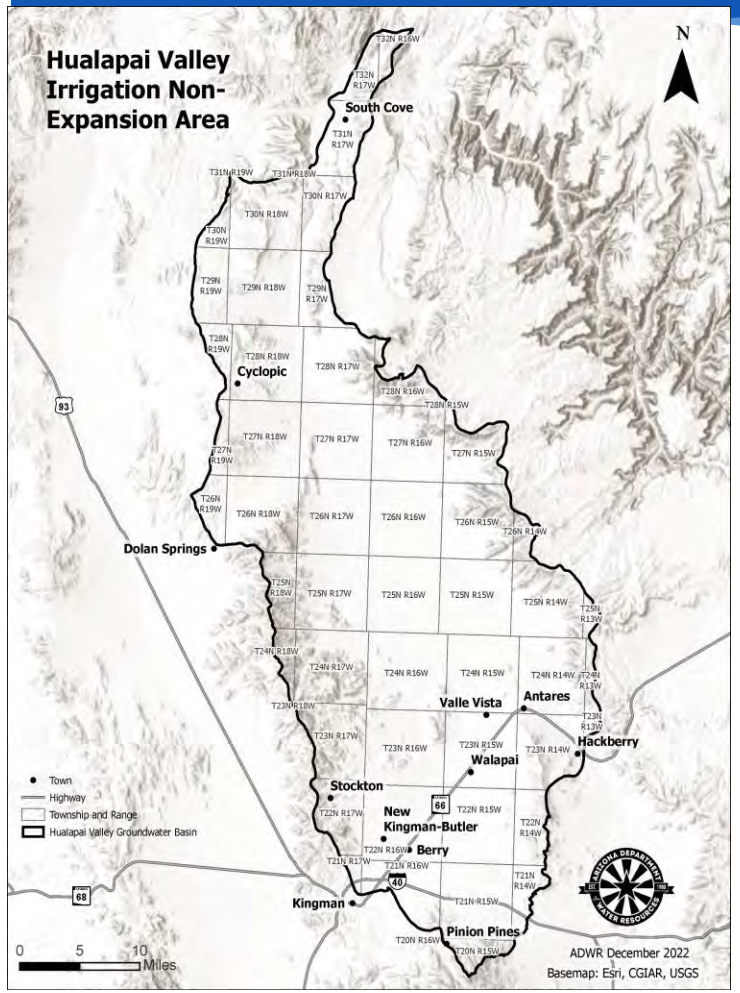
- strengthen the integrity of the Assured Water Supply program,
- protect consumers and aquifers, and
- ensure future growth is not reliant on mined groundwater.

Focus: Rural Groundwater

- Outside the Active Management Areas and Irrigation Non-Expansion areas there is limited regulatory framework for managing groundwater.
  - There is no requirement for metering and reporting non-exempt wells, with the exception of community water systems.
- Certain areas are growing in population at a rate similar to the AMAs. Some are experiencing significant growth in agriculture.
- Many communities are facing aquifer depletion with limited access to renewable supplies and no tools to manage the groundwater declines.
- There are increasing calls for a framework that will assist rural communities to manage their groundwater resources.

Hualapai Valley INA

Designated by decision of the Director, December 19, 2022



- On June 23, 2022, citing to updated USGS modeling and "ongoing and extreme drought conditions," the Mohave County Board of Supervisors requested that the ADWR Director take “whatever actions available and necessary to designate the Hualapai Valley Groundwater Basin as a subsequent [irrigation non-expansion area (INA)].”
- After an informal public meeting and comment period, on October 12, the Director initiated proceedings to designate the Hualapai Valley Groundwater Basin as an INA.
- On November 12, ADWR held a hearing in Mohave County to present information on INA requirements and factual data regarding the Hualapai Valley Basin, as well as to take oral and written comments.

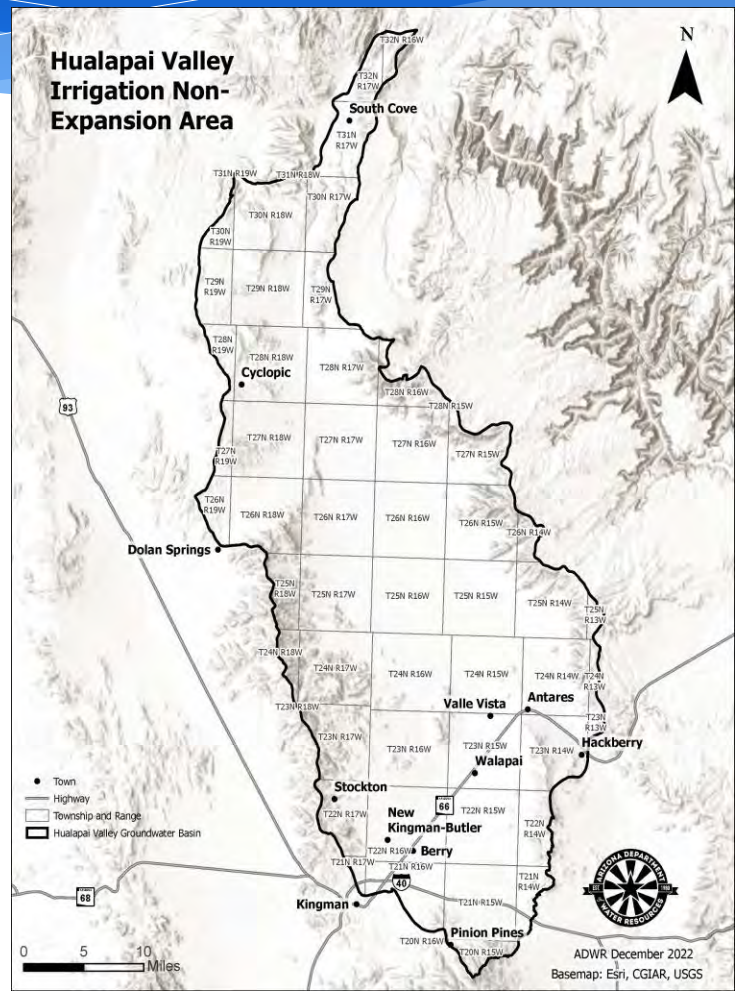
Hualapai Valley INA

Designated by decision of the Director, December 19, 2022

Upon review of updated modeling and other relevant information, including current drought conditions, the Director found:

- At current rates of withdrawal, depth to groundwater will increase
- After 100 years of pumping at current levels, ~1 in 20 existing wells are estimated to be no longer pumpable
- For the basin as a whole, outflows are currently exceeding inflows by a factor of 4
  - ~10,000 AFY of inflow to the aquifer
  - ~44,000 AFY of outflow from the aquifer

Based on these findings, the Director designated the Hualapai Valley Groundwater Basin as an INA on December 19, 2022.

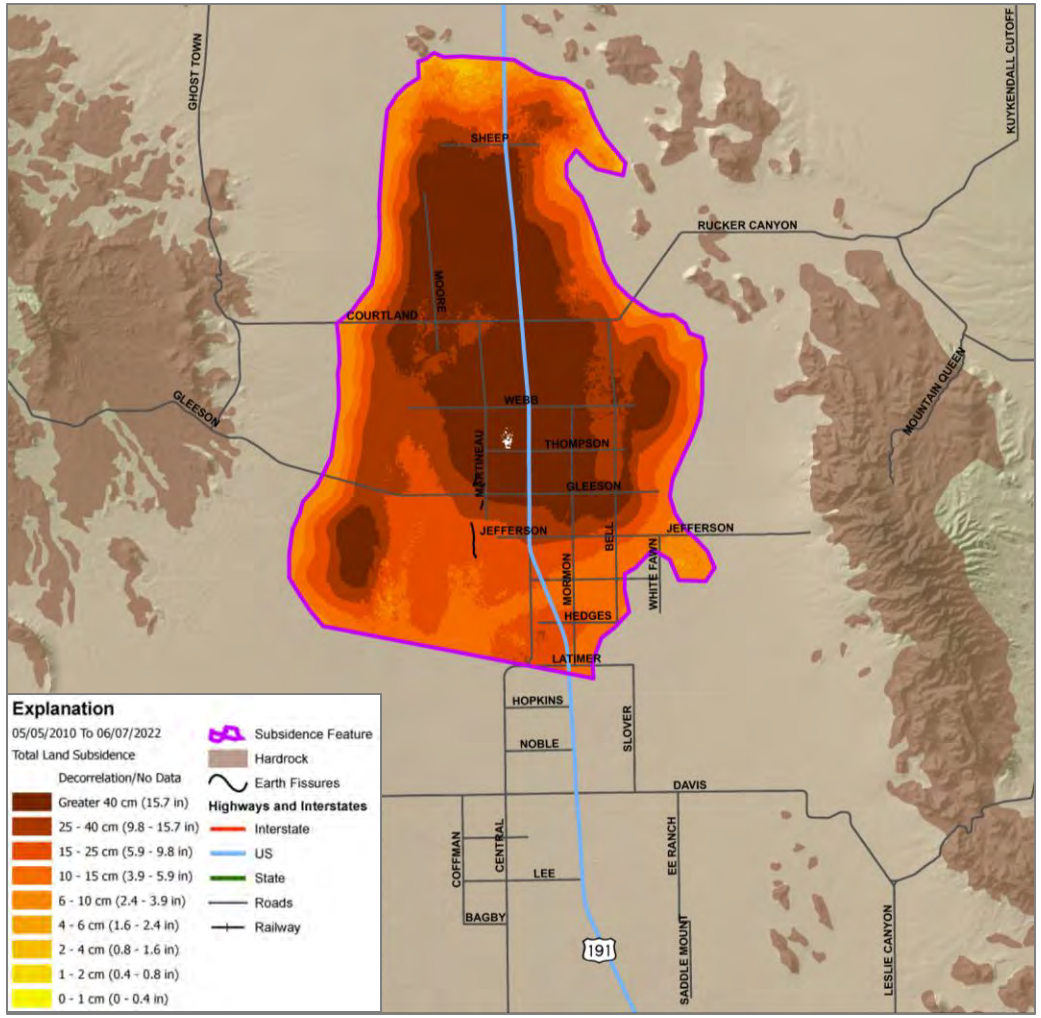


Douglas AMA

Designated by ballot initiative, December 1, 2022

- For the basin as a whole, outflows are currently exceeding inflows by a factor of 2.6
  - ~22,000 AFY of inflow to the aquifer (USGS estimates)
  - ~ 57,000 AFY of outflow from the aquifer (USGS estimates)*
- Groundwater declines of over 200 feet have been observed since 1965
- Land subsidence and earth fissures have been observed

*2007-2021 average



Douglas AMA Establishment Process

Management Goal

- Public meetings for background and public input
- Next: Public hearing with a formal comment period (estimated June 2023)

Management Plan

- Plan development will be guided by the goal and public input.
- Target: Adopt plan by the end of 2024, with conservation requirements becoming effective January 1, 2027.

DRAFT GOAL:

The management goal of the Douglas AMA is to support the general economy and welfare of communities in the basin by attempting to reduce the rate of aquifer depletion by 2035 and by further attempting to reduce the rate of aquifer depletion every 10 years thereafter.

Objective: Recommendations for a Water Management Framework

Objective:

Develop recommendations for a water management framework to assist rural Arizona communities to manage their groundwater resources.

"The Governor's Water Policy Council is created to analyze and recommend updates, revisions and additions to the GMA and related water legislation, ***which shall include, without limitation, analysis and recommendations for groundwater management outside current Active Management Areas.“***

Summary

Objective: Review and make recommendations 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, and
- ensure future growth is not reliant on mined groundwater.

Objective: Develop recommendations for a water management framework to assist rural Arizona communities to manage their groundwater resources.

Deadline: December 2023

IV. Structure & Process

Council

- The Director of ADWR serves as the Chair of the Council.
- ADWR will provide staffing and technical support to the Council, which may include support from the Department's legal counsel.
- The Council will meet at such frequency as the Governor, or the Chair may direct.
  - Meetings will be called to solicit substantive input discussion and to make recommendations.
- The Council shall prepare legislative and policy recommendations at a frequency to be determined by the Chair in consultation with the Governor or her designee.
- Council members may designate one alternate from their organization; alternates are responsible for briefing their respective Council member.

Committees

"The Chair shall create committees, as necessary, to facilitate the Council's work, and the Chair shall appoint the chair and vice chair for any committee so created."

- Two initial committees: AWS and Rural Groundwater
- Committee leads: ADWR staff
- The Chair may additionally form and appoint members or their representatives to technical working groups

- Committee membership
  - Council members are asked to provide their choice of committee to the Director in writing
  - The Chair and Governor's Office will make final decision of committee rosters
- Committee members will be council members or their designated representative
  - Designees are empowered to make decisions and are responsible for briefing their respective council members

V. Upcoming Meetings

Initial Committee Meetings

- Committees will meet at least once a month from June through December 2023.
- Dates for the first two committee meetings follow. Additional dates will be forthcoming.
- Tentative Council dates will also be planned.

Assured Water Supply Committee

Tuesday, June 27, 2023, 1:00 pm – 3:00 pm
Conference Room 3175
1110 West Washington Street, Phoenix

Rural Groundwater Management Committee

Thursday, June 29, 2023, 1:00 pm – 3:00 pm
Conference Room 3175
1110 West Washington Street, Phoenix

VI. Closing Remarks

Contact Information

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Carol Ward
Deputy Assistant Director
cward@azwater.gov

ADWR Governor's Water Policy Council webpage:
new.azwater.gov/gwpc

AWS Committee Meeting Presentation,
June 27, 2023

Governor's Water Policy Council

Assured Water Supply Committee

June 27, 2023

Meeting Logistics

- Please note that this meeting is being broadcast via webinar and is being recorded.
- The meeting recording and materials will be posted to the Council webpage **https://new.azwater.gov/gwpc**.
- For those joining by webinar, only members of the committee will be able to unmute themselves to participate in the meeting.
- Please remember to identify yourself when speaking.
- For those in the room, a reminder to unmute and mute your microphone.
- *Technical issues? Please call the ADWR Help Desk at* ***602-771-8444*** *or email tickets@azwater.gov.*

I. Welcome & Introductions

Director Tom Buschatzke, Council Chair

Agenda

I. Welcome & Introductions
II. Issue, Task, Objective & Principles
III. Structure, Process & Timeline
IV. Initial Concepts & Discussion
    i. ADWR
    ii. Committee
V. Next Steps
VI. Closing Remarks

II. Issue, Task, Objective & Principles

GMA & Assured Water Supply Program

Arizona's Groundwater Management Act was passed to address unsustainable groundwater mining.

The law, coupled with access to Colorado River water through the CAP, enabled growth in the Active Management Areas (AMAs) where groundwater availability was most threatened.

The Assured Water Supply (AWS) program has enabled responsible development in an arid environment.

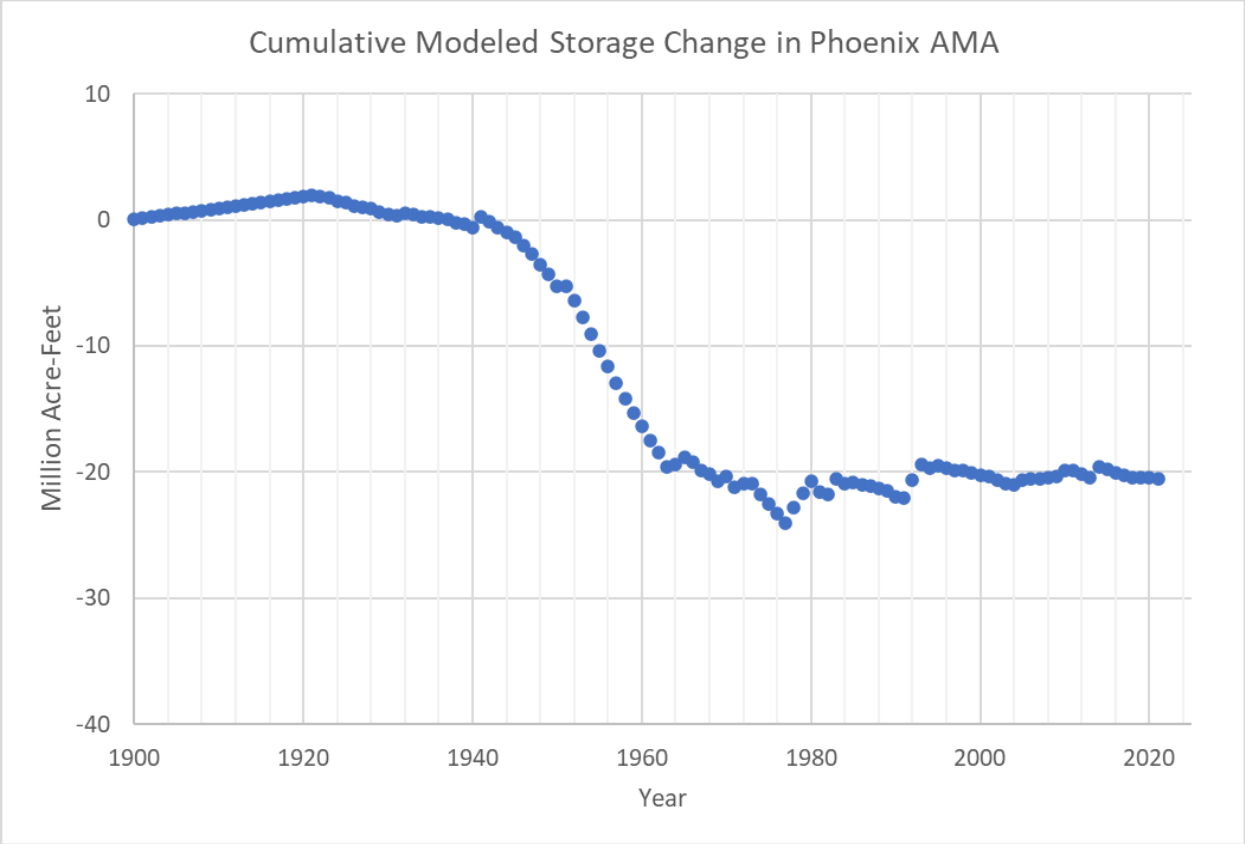
- Provides consumer protection for homebuyers
- Ensures sustainable water supplies
- Positions Arizona as a leader in water resource management

Commitment from cities, water providers, and developers has made the program what it is today.

Assured Water Supply Program

The program has driven innovation, collaboration, creativity and success in water resource management, including:

- recharge
- replenishment
- banking
- exchanges
- demand reduction
- investment in renewable supplies & infrastructure



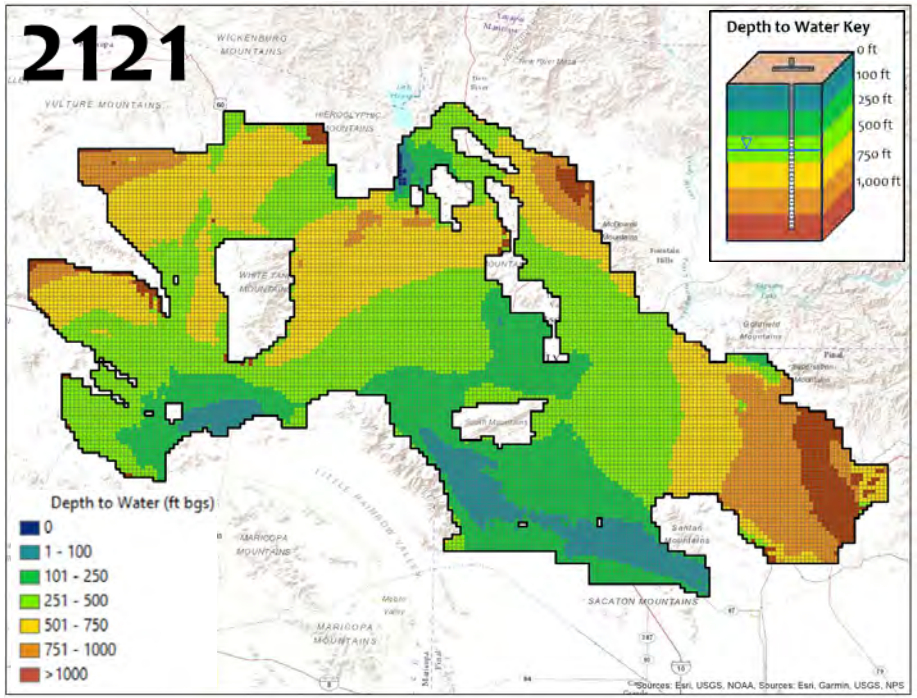
AWS Groundwater Modeling

The AWS program requires ADWR to carefully evaluate the availability of groundwater supplies in the AMAs for 100 years before permitting additional future municipal growth on groundwater.

AWS models are regularly updated by the Department to utilize the best available science and data and are constructed to meet the rules, policies, and requirements of the AWS program.

AWS Groundwater Modeling - Phoenix AMA

Simulated Depth to Water after 100 Years

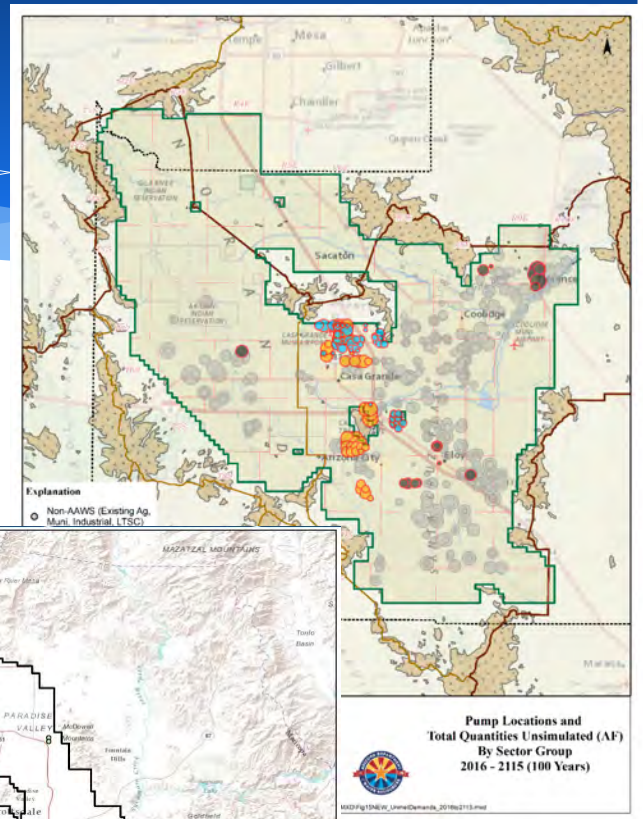


- Designated providers have little to no unmet demand in their service areas and groundwater levels are not dire in the heart of the Valley.
- This means that over half of Arizona's population resides where there are SECURE water supplies for today and into the future, as well as the planned growth associated with existing determinations.

AWS Groundwater Modeling – Unmet Demand

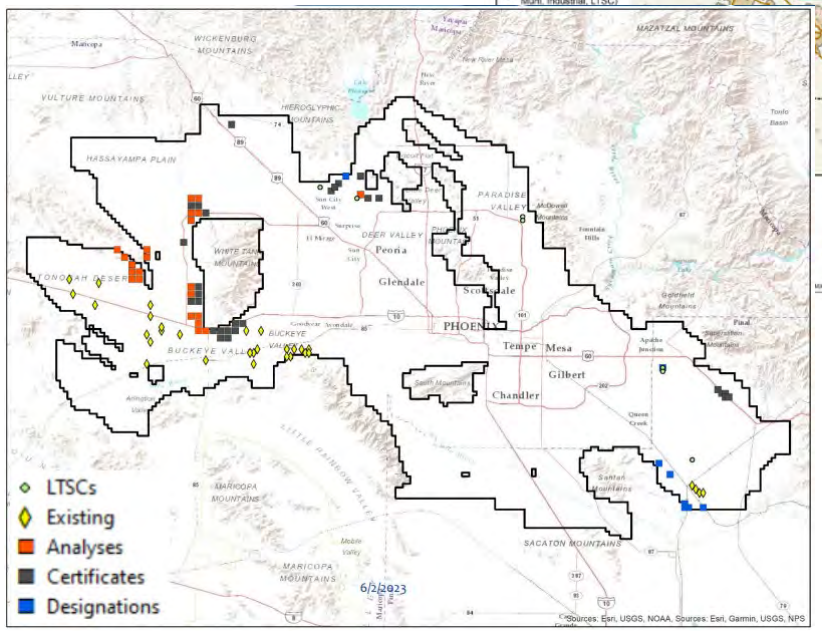
Pinal Model (2019)

- Over the next 100 years, unmet demand for groundwater in the AMA was projected to exceed 8 million acre-feet (maf).



Phoenix Model (2023)

- Over the next 100 years, the Phoenix AMA is projected to experience 4.86 maf of unmet demand for groundwater based on current, committed, and projected demands for groundwater.



What the “Unmet Demand” Means

“Unmet demand” refers to the amount of groundwater use that is projected in the model based on current, committed, and projected **demands for groundwater that cannot be met over the next 100 years** based on the model’s forecasted availability.

Before a plat can be approved and recorded by the local governing authority, the subdivision developer must demonstrate to ADWR that all five requirements of the AWS program are met.

> There must be sufficient high-quality water physically, continuously, and legally available for the proposed subdivision.

All existing and committed water demands must be fully met.

Water Before Growth

The updated groundwater modeling in the Phoenix and Pinal AMAs demonstrate that, over the next 100 years, these two AMAs have reached the anticipated limits of growth on groundwater supplies. Without action, this limitation will eventually be reached in the other AMAs, as well.

In keeping with the findings of unmet demand, the State will not approve new determinations of AWS for proposed residential and commercial subdivisions within these areas based solely on the available groundwater supplies.

Water providers or developers seeking new assured water supply determinations must demonstrate additional renewable supplies or reductions in demand before development is permitted and may not rely on AMA groundwater.

The program is doing what it was intended to do, **requiring water supplies to be secured *ahead of growth*.**

The Issue

Constraints on the physical availability of groundwater are attributable to the cumulative results of decades of unreplenished groundwater pumping and continued reliance on groundwater resources for future development.

Reductions in Colorado River supplies will increase reliance on groundwater within the CAP service area—the Phoenix, Pinal, and Tucson AMAs.

Without additional renewable water supplies and reductions in demand, progress made toward reaching the management goals of the safe-yield AMAs is expected to erode, and unmet demand will continue to grow.

When the issued-but-unbuilt pumping demands are included in the Phoenix AMA's water budget, the projected future annual decline averages 387,000 AF, compared to an average annual decline of 23,500 AF from 2000-2021.

The pause in permitting of additional groundwater-dependent development allows time to address the challenge *before it becomes a crisis*, not only for future growth but for existing demands.

Task

The Council is tasked to look forward, like those who drafted the Groundwater Management Act, and identify bipartisan, collaborative opportunities to update the Assured Water Supply program, driving the next iteration of forward-looking policy, planning, management, and innovation that will help close the gap in unmet water demand, meet the objectives of the AMAs, uphold the strength and integrity of the Assured Water Supply Program, and protect consumers and groundwater supplies.

Objective

Review and make recommendations for updates to Assured Water Supply policies—legislatively, administratively, or by executive action—to address the challenges revealed by the modeling projections.

Deliverables: Policy recommendations that meet the objective and principles.

Focus: Development of high-priority, well-constructed proposals, keeping the timeline in mind.

Principles

- Proposals must protect the strength and integrity of the Assured Water Supply program.
- Proposals should enable future growth without reliance on mined groundwater.
- Proposals may not reduce the 100-year requirement or increase the depth to which groundwater may be pumped.
- Proposals must ensure there is water before growth.
- Proposals must protect consumers.

III. Structure, Process & Timeline

Committee & Subcommittees

Committee members will be Council members or their designated representatives. Designees are empowered to make decisions and are responsible for briefing their respective Council members.

Committees may form technical subcommittees as necessary to accomplish tasks. Subcommittees will serve as informal work groups that may include proxies with technical expertise and perspectives.

Subcommittees may invite stakeholders to participate and share their insight and perspective.

Subcommittees will report back to the committee.

To keep the process nimble, ensure continuity of discussion, and enable progress and outcomes, committees and subcommittees will be small.

Process

Committee meetings will be open to the public, but participation will be limited to committee members. Council members will represent their respective communities.

Committee meetings will be recorded and posted along with meeting materials to the Council webpages.

Meetings will be working meetings to enable discussion and arrive at decisions.

Agendas and materials will be provided as much in advance as possible.

A subcommittee or committee does not require unanimity to move a proposal forward. If there are concerns with proposals, they will be noted and documented.

Process

The Committee is tasked to provide proposals to the Council for consideration in **December 2023**. The process will move quickly.

The committee will meet at least once a month for two hours from June through December.

- Tentative dates and times have been set to reserve meeting space and enable the process. Adjustments may be made, as necessary.
- Additional committee and subcommittee meetings will be scheduled as needed.

Committee members are encouraged to attend meetings in person. A virtual option may be available.

July	13	Thu	1:00 PM	AWS
August	15	Tue	1:00 PM	AWS
August	30	Wed	1:00 PM	Council
September	12	Tue	10:00 AM	AWS
September	27	Wed	1:00 PM	Council
October	17	Tue	10:00 AM	AWS
October	27	Fri	1:00 PM	Council
November	14	Tue	10:00 AM	AWS
November	29	Wed	1:00 AM	Council
December	4	Mon	1:00 AM	AWS
December	20	Wed	1:00 PM	Council

Tentative Timeline

June

- Committee meeting: Begin identifying proposal concepts

July

IV. Initial Concepts & Discussion

ADWR Initial Concepts

AWS Modeling

ADWR staff have received critiques/concerns regarding the validity of the model. Many of the critiques are directed at programmatic requirements and assumptions that are tied to statute, rule, and policy, including:

- Assumptions regarding the use of effluent to replace groundwater pumping
- Ramping up of demands over time
- Assumptions regarding Colorado River shortages

These and other policy concerns can be discussed.

Concerns and proposals that are technical in nature, such as pumping relocation, can be addressed by ADWR staff outside of the Council and committee process. Please contact AWS Manager David McKay.

Wildcat & Build to Rent Development: Challenge

Additional residential development dependent on groundwater is paused in the Pinal and Phoenix AMAs until there are additional renewable water supplies or demands are reduced.

However, residential development that does not meet the definition of a subdivision—six or more parcels for sale or lease, excluding rentals of one year or less (ARS §32-2101)—circumvents the AWS requirements and the pause on additional development.

Wildcat and build to rent developments do not have the consumer protection of an assured water supply.

Continued development without an assured water supply exacerbates groundwater mining, puts homeowners at risk, and feeds negative perceptions of Arizona's ability to manage water supply.

Wildcat & Build to Rent Development: Concept

- Define residential lease community (six or more units, etc.)
- A city or County shall not approve a building permit for one or more detached residential dwelling units that are located in a residential lease community within an initial AMA unless the units have obtained a certificate of assured water supply or a written commitment of water service from a municipality or private water company.
- Ensure all applicable fees are paid (CAGRD).
- Strengthen "acting in concert" provisions.

Commingling: Challenge

Currently, an applicant for a certificate or analysis relying on water delivered through a provider's commingled system must demonstrate the physical availability of any groundwater delivered through the system, even if the applicant or water provider brings a new non-groundwater supply into the system.

So even with sufficient renewable supplies for the proposed new subdivision, in some instances, development cannot move forward, because the water delivered to the proposed new subdivision will also include groundwater.

This requirement is intentional, however, as homeowners in the new subdivision would not have an assured supply because they would bear the risks of groundwater shortage, designed to be avoided by the AWS program.

Commingling: Concept

Applicable to proposed subdivisions within a service area/water system that:

- Is not designated as having an AWS (i.e., applications for analyses or certificates)
- Includes groundwater as a water supply
- Includes unmet demand within the service area

A developer bringing in an alternative supply to support a new subdivision must secure an equivalent volume available to the water provider to help reduce unmet demand within that provider's service area.

Allowing new growth to proceed this way will incentivize and enable the use of alternative supplies and protect the integrity of the AWS program for all consumers.

Future Infrastructure: Challenge

Alternative water supplies may require substantial infrastructure development in order to make the supplies physically, continuously and legally available.

Ex: Transportation of groundwater from outside an initial AMA – may require transportation infrastructure

Infrastructure construction can take many years to complete. However, financing that infrastructure may be linked to the new customers the water is intended to serve.

Certificates have not traditionally allowed for construction of future infrastructure because a certificate of assured water supply analysis is a "snapshot" of existing water supplies.

Under current rules, once a single home is sold, the certificate cannot be revoked even if the water supply is no longer available.

Future Infrastructure: Concept

To enable the construction of infrastructure to support future growth, modify AWS rules to allow issuance of certificates based on future infrastructure.

- Identify requirements that must be met before and after issuance of certificates (e.g., five-year construction plan, issuance or completion of necessary permits and approvals, financial assurances, etc.)
- Include milestones for infrastructure completion
- Provide for expiration of certificate if milestones are not met
- Broaden financial capability requirements for certificates to include posting a performance bond for the benefit of the platting authority (and/or water provider)

Committee Concepts & Discussion

V. Next Steps

Action Items & Upcoming Meetings

Action item -- July 7:

DWR will post proposals that are consistent with the principles to www.azwater.gov/gwpc

Next AWS Committee Meeting:

Thursday, July 13, 1:00 pm, ADWR, Conference Room 3175

- Focus: Discussion and prioritization of proposal concepts

Next Governor's Water Policy Council meeting:

Wednesday, August 30, 2023, 1:00 pm (tentative)

VI. Closing Remarks

Contact Information

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Trent Blomberg
Council Coordinator
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Governor's Water Policy Council webpage:
www.azwater.gov/gwpc

AWS Committee Meeting Presentation, September 27, 2023

Governor's Water Policy Council

Assured Water Supply Committee

September 27, 2023

Meeting Logistics

- Please note that this meeting is being broadcast via webinar and is being recorded.
- The meeting recording and materials will be posted to the Council's webpage (https://www.azwater.gov/gwpc).
- Only members of the Committee will be able to unmute themselves to participate in the meeting.
- Please identify yourself before speaking.
- *Technical issues? Please call the ADWR Help Desk at 602-771-8444 or email tickets@azwater.gov.*

I. Welcome

Agenda

I. Welcome
II. Committee Objective
III. Proposals Discussion
    I. Alternative path to designation
    II. Wildcat development
IV. Next Steps
V. Closing Remarks

II. Committee Objective

AWS Committee Objective

Review and make recommendations for updates to Assured Water Supply policies—legislatively, administratively, or by executive action—to address the challenges revealed by the modeling projections.

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III. Proposals Discussion

III. Proposals Discussion

Alternative Path to Designation

Background

Many private utilities and smaller municipalities that would like to pursue designation face hurdles to doing so, including:

- Legacy groundwater use from subdivisions that predate the Assured Water Supply rules or uses that fall outside of the subdivision definition
- Limited renewable supplies
- Historic barriers to cost recovery for the expense and effort of securing renewable supplies and applying for designation.

When the original AWS rules were promulgated, existing providers at the time were allowed to transition from reliance on groundwater to the renewable supplies under a DAWS, including certain exemptions and groundwater allowances.

Purposes of Concept

The *Alternative Pathway to Designation* concept seeks to address the following challenges:

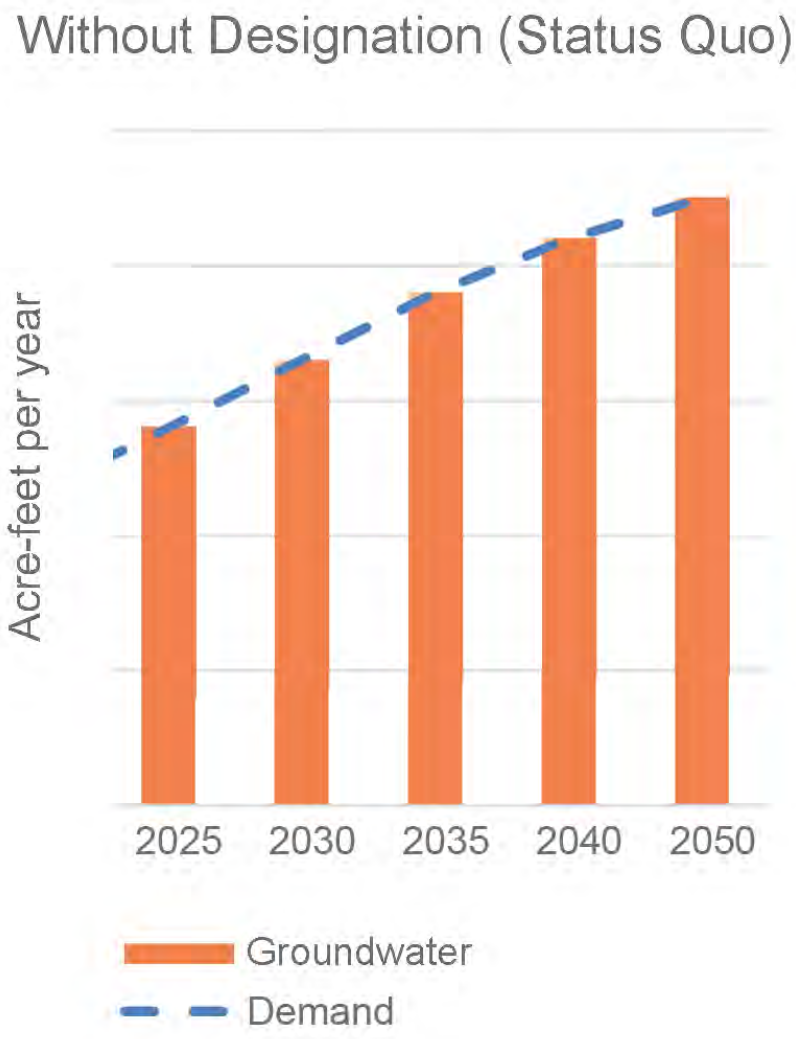
- The commingling issue associated with certificates and alternative water supplies
- Unmet demand and/or exceedances of depth-to-water limit in AMA model
- Incorporating new, non-groundwater supplies into a provider's water portfolio
- Facilitating near-term growth while future infrastructure is under development
- Creating a long-term benefit for the aquifer.

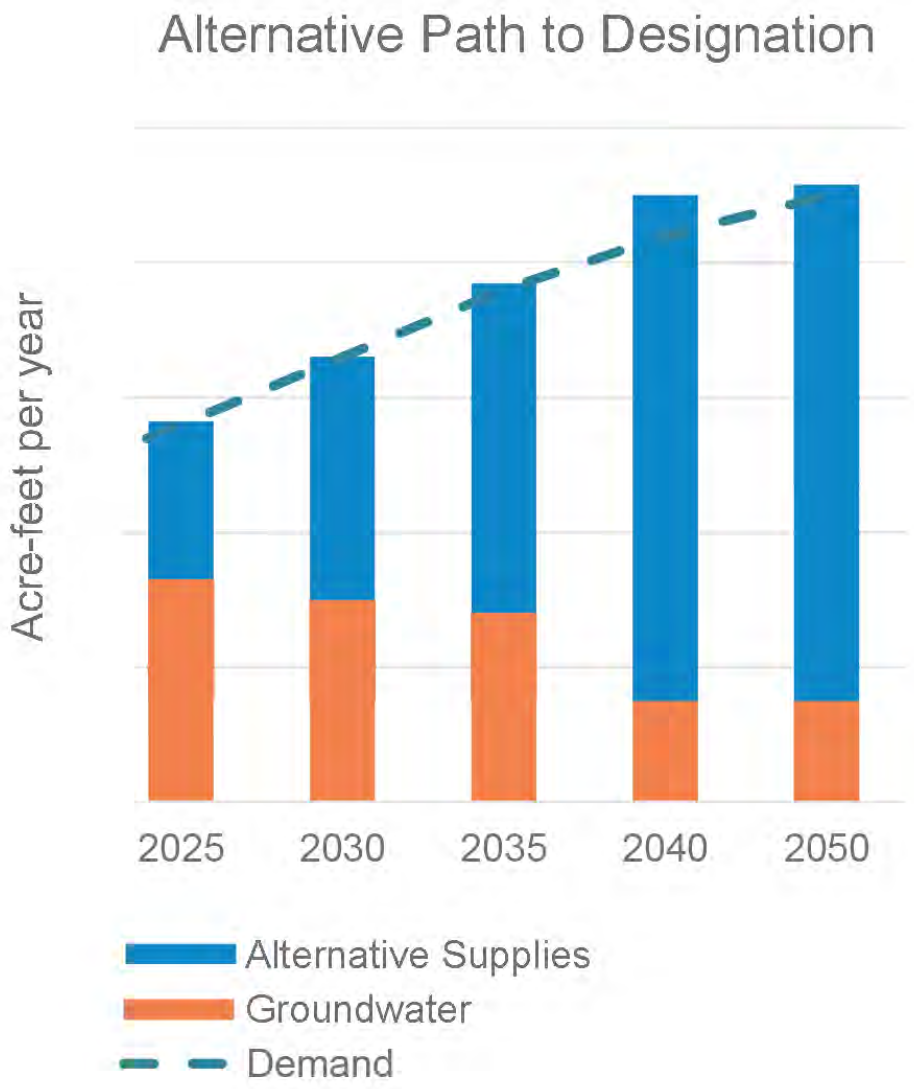
We have generated this concept based on stakeholder feedback and suggestions related to "Hybrid" and "Transitional" Designation concepts.

Overview of the Concept

1. **Existing groundwater pumping is grandfathered into the Designation.**
   a. Physical availability is grandfathered.
   b. A groundwater allowance is granted to provide Consistency with the Goal.
2. **New Alternative water supplies can be added to the Designation portfolio.**
   a. Grandfathered groundwater can be used in the interim period before supplies are delivered.
   b. A portion of the new supplies [30%] will be used to substitute for existing groundwater pumping to facilitate a transition away from groundwater.

Hypothetical Visualization: Change In Water Provider's Portfolio Over Time





Existing Groundwater Demands:
Physical Availability

- The following demands would be "grandfathered in" for purposes of physical availability:
  - Demand for issued Certificates of Assured Water Supply; and
  - Existing groundwater pumping and non-groundwater recovered outside the area of impact (AOI) based on annual reporting for 2021.
- Demands from Analyses of Assured Water Supply are **not** included.
- Subject to provisions related to alternative supplies.
- No additional groundwater may be added to the designation without a demonstration of physical availability.

Existing Groundwater Demands:

Consistency with the Management Goal

Consistency with the management goal would be met as follows:

- The provider would enroll as a member service area with CAGRD.
- The water provider would receive a lump sum groundwater allowance, based on deliveries in 2021.
- The water provider will decide how to manage groundwater allowance usage, water supply deliveries, CAGRD reporting, and billing individual customers for CAGRD assessments.

New Alternative Supplies

- "New Alternative Supplies" refers to water supplies other than groundwater withdrawn in the AMA that were **not served in 2021.**
  - Includes effluent, surface water, Colorado River water, CAP water, transported groundwater.
  - May be stored and recovered within the area of impact.
- New Alternative Supplies may be added to the Designation to serve new growth. The grandfathered groundwater volumes will be reduced by [30%] of the new supplies to facilitate an incremental transition away from groundwater over time.
- New alternative supplies must meet AWS requirements for designations including physical, continuous and legal availability and financial capability.

New Alternative Supplies

Adding New Alternative Supplies to the Designation that will require future infrastructure construction would be evaluated under ADWR's existing rules for designations:

- 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.

New Alternative Supplies

- 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 may be extended to private water providers.

Expedited Modification For Incremental Growth

- During the designation term, the Department will allow for an expedited modification to include an additional non-groundwater supply.
- For an expedited modification, the Department would review only:
  - AWS requirements for that additional supply.
  - The demand schedule.
- ADWR rules could be amended to allow expedited modifications to all designated providers.

Designation Term / Modification

- Initial term of no greater than 15 years.
- May be renewed or modified for additional terms of up to 15 years, subject to demonstrating that the Designation requirements are met.
- Grandfathered groundwater volume will be reduced by volume of reported pumping since the most recent designation was issued.
- May continue under alternative designation framework indefinitely.

Undesignated provider starting scenario

2,000 AF/yr	Unbuilt certificate demand *(replenished once built)*
8,000 AF/yr	Groundwater delivered – certificates *(replenished)*
10,000 AF/yr	Groundwater delivered – non-AWS/pre-1995 *(no replenishment or limit)*
20,000 AF/yr	**Total 2021 groundwater volume**

Provider applies for alternative designation and adds new alternative supplies

6,000 AF/yr	Effluent – will be stored & recovered within AOI
2,000 AF/yr	Surface water – will be delivered directly
8,000 AF/yr	**Total new alternative supplies**

New alternative supplies enable new growth & reduce 2021 groundwater volume

5,600 AF/yr	(70% of total)	New alternative supplies – future demands
2,400 AF/yr	(30% of total)	New alternative supplies – substitute for 2021 groundwater

Provider receives a grandfathered groundwater volume based on 2021 demands

17,600 AF/yr	= 20,000 af/yr (2021 GW volume) - 2,400 af/yr (substituted 2021 GW supply)
1,760,000 AF	**Total groundwater volume over the 100 period** (previously 2 MAF)

Benefit to the Aquifer: Example

Total 2021 groundwater pumping (no designation):

20,000 af/yr*

(2 MAF over 100 years)

- Without designation, unreplenished (non-AWS) groundwater uses could continue to grow, unconstrained, beyond the total 2021 pumping.

Total groundwater pumping after designation:

17,600 af/yr

(1.76 MAF over 100 years)

- Groundwater pumping would **not** increase.
- ***Initial benefit* to aquifer of 240,000 af** over 100 years through reduced GW pumping.
- ***Total benefit* to aquifer will be <u>greater</u>:**
  - Part of the 17,600 af/yr GW volume that was previously unreplenished will be replenished.
  - New alternative supplies may be added on an expedited basis, further reducing the 17,600 af/yr GW volume.

**Total GW use includes both unreplenished and replenished GW withdrawals.*

Year 0 DAWS:	
17,600 AF/yr	Groundwater
6,000 AF/yr	Effluent
2,000 AF/yr	Surface Water
25,600 AF/yr	TOTAL

Year 0 → Year 1 → Year 2 → Year 3 → Year 4 → Year 5 → Year 6 → Year 7 → Remainder of term

Initial Period (current state)

- As a Designated Provider, commingling is resolved. Provider can now grow on effluent and surface water
- Up to 5,600 AF of new growth.

Year 0 DAWS:	
17,600 AF/yr	**Groundwater**
6,000 AF/yr	Effluent
2,000 AF/yr	Surface Water
25,600 AF/yr	TOTAL

- Harquahala Transportation approved by ADWR (5,000 AF/yr) and meets AWS requirements including:
  - CAP wheeling agreement completed
  - Pipeline construction financed
- **Expedited modification** to include this new volume

Year 2 DAWS:	
16,100 AF/yr	**Groundwater**
6,000 AF/yr	Effluent
2,000 AF/yr	Surface Water
5,000 AF/yr	Harquahala GW
29,100 AF/yr	TOTAL

Year 0 | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Remainder of term

Initial Period (current state)

Interim Period (pipeline under construction)

- As a Designated Provider, commingling is resolved. Provider can now grow on effluent and surface water
- Up to 5,600 AF of new growth.

- Provider has now added 5,000 AF/yr to its D&O. It can now serve additional new growth up to 3,500 AF/yr. The other 1,500 AF/yr must be used as a substitute for existing groundwater pumping.
- Provider may use any combination of supplies during interim period.

Year 0 DAWS:	
17,600 AF/yr	**Groundwater**
6,000 AF/yr	Effluent
2,000 AF/yr	Surface Water
25,600 AF/yr	TOTAL

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5,000 AF/yr	Harquahala GW
29,100 AF/yr	TOTAL

Harquahala Deliveries Begin

Year 0 | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Remainder of term

Initial Period (current state)

- As a Designated Provider, commingling is resolved. Provider can now grow on effluent and surface water
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Interim Period (pipeline under construction)

- Provider has now added 5,000 AF/yr to its D&O. It can now serve additional new growth up to 3,500 AF/yr. The other 1,500 AF/yr must be used as a substitute for existing groundwater pumping.
- Provider may use any combination of supplies during interim period.

Delivery Period (new supplies have arrived)

- Designation continues until end of term unless modified

Overview & Recap

The *Alternative Pathway to Designation* concept addresses the challenges that non-designated water providers have had in obtaining a designation.

- 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.
- Facilitating incremental growth and a steady transition from groundwater to alternative supplies such as surface water, effluent, or transported supplies.

Questions & Discussion

Next Steps

III. Proposals Discussion

Wildcat Development

Wildcat Development Defined

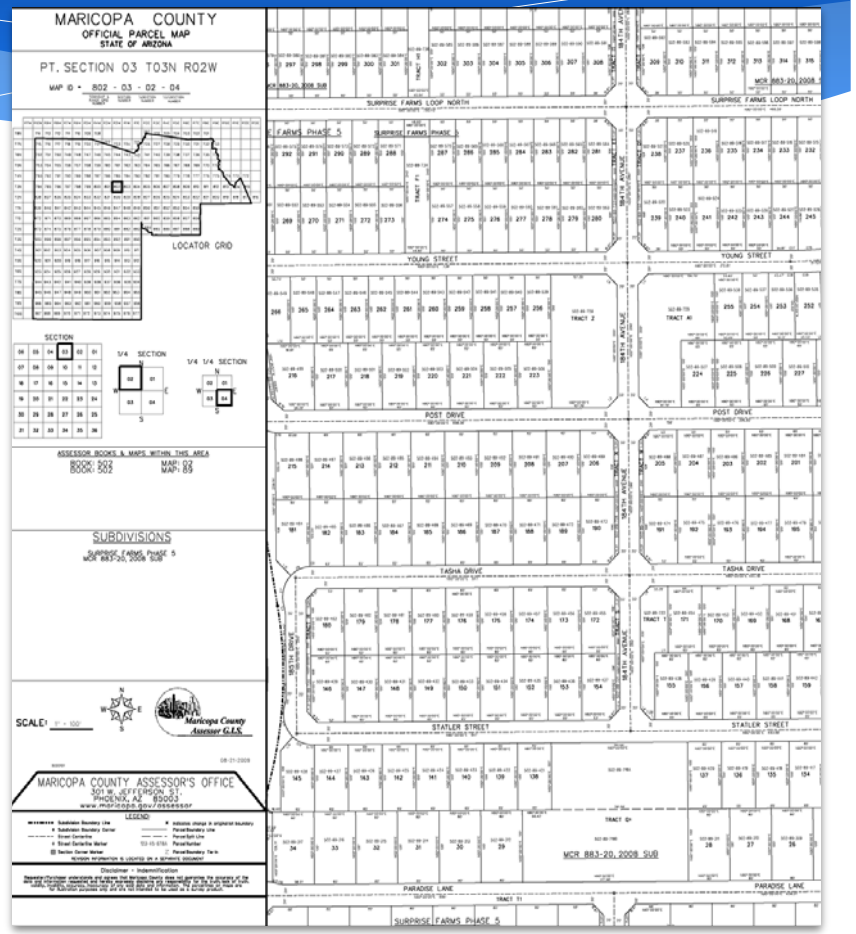
"Proliferation of development by splitting residential parcels of 6 or more lots with the intent to circumvent laws relating to the creation of a subdivision"

"Wildcat" development is an informal term to characterize illegal lot splitting. The purpose of the following proposals is to stop those who are intentionally circumventing laws that relate to assured water supply and other improvements in subdivisions.

Wildcat Development Challenges

Main Challenges Identified:

- **Acting in Concert** - Vague and subjective; intent
- **Contiguous** - Limits the scope of acting in concert; a road/street
- **Timing of Violation** - "Before offering for sale or lease..."
- **Current Threshold** - 6 or more lots is the threshold



Proposed Concepts

1. Strengthen the definition of “acting in concert”
2. Clarify the definition of “contiguous”
3. Apply unauthorized subdivision penalties to each property instead of the unauthorized subdivision as a whole
4. Improve information gathering and enforcement at county/municipal level
5. Reduce legal lot splitting of parcels to 4 or fewer

Strengthen "Acting in Concert"

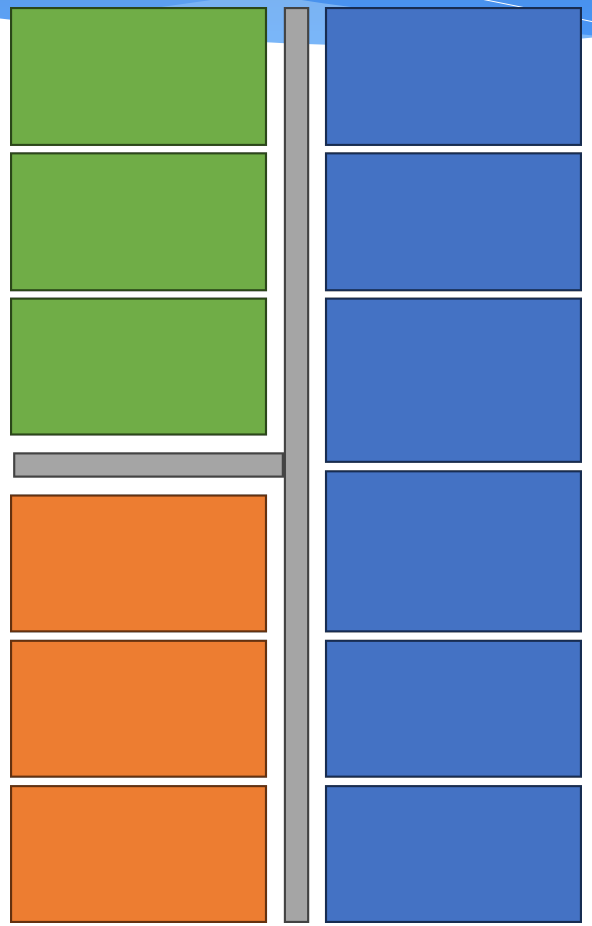
Clarify that the following are evidence of "acting in concert" (evidence of collaborating to pursue a concerted plan)

- **25% or more shared ownership interests/substantial control**
  - *Example:* individual exercises substantial control over multiple shell companies to hide ownership
- **50% or more shared development resources**
  - *Examples:* substantial use of shared GCs, surveyors, engineering or architectural firms, and subcontractors

Clarify "Contiguous"

Clarify the current definition of "contiguous" (share a common boundary or point) by:

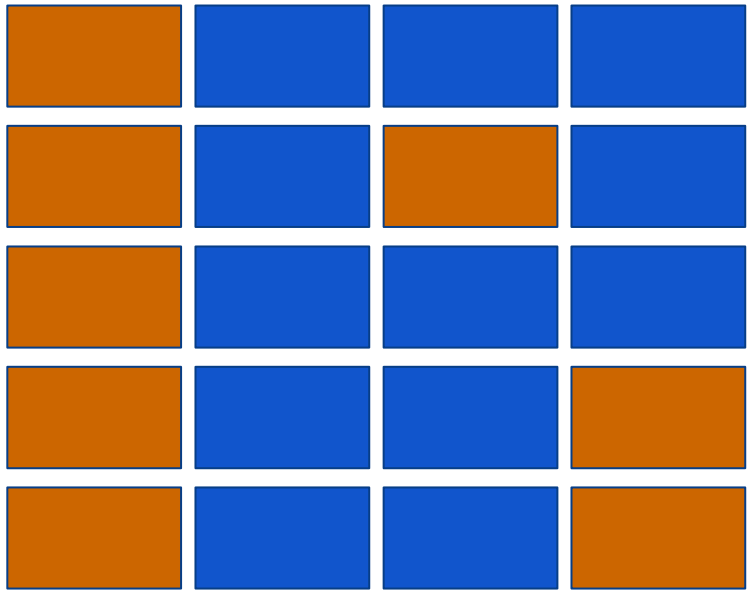
- Using a tax parcel as the defined area for considering whether or not parcels are considered contiguous
- Remove "street, road" from definition
- Keep county, state, and federal highways and other "natural or man-made" barriers that divide parcels as non-contiguous



Penalties

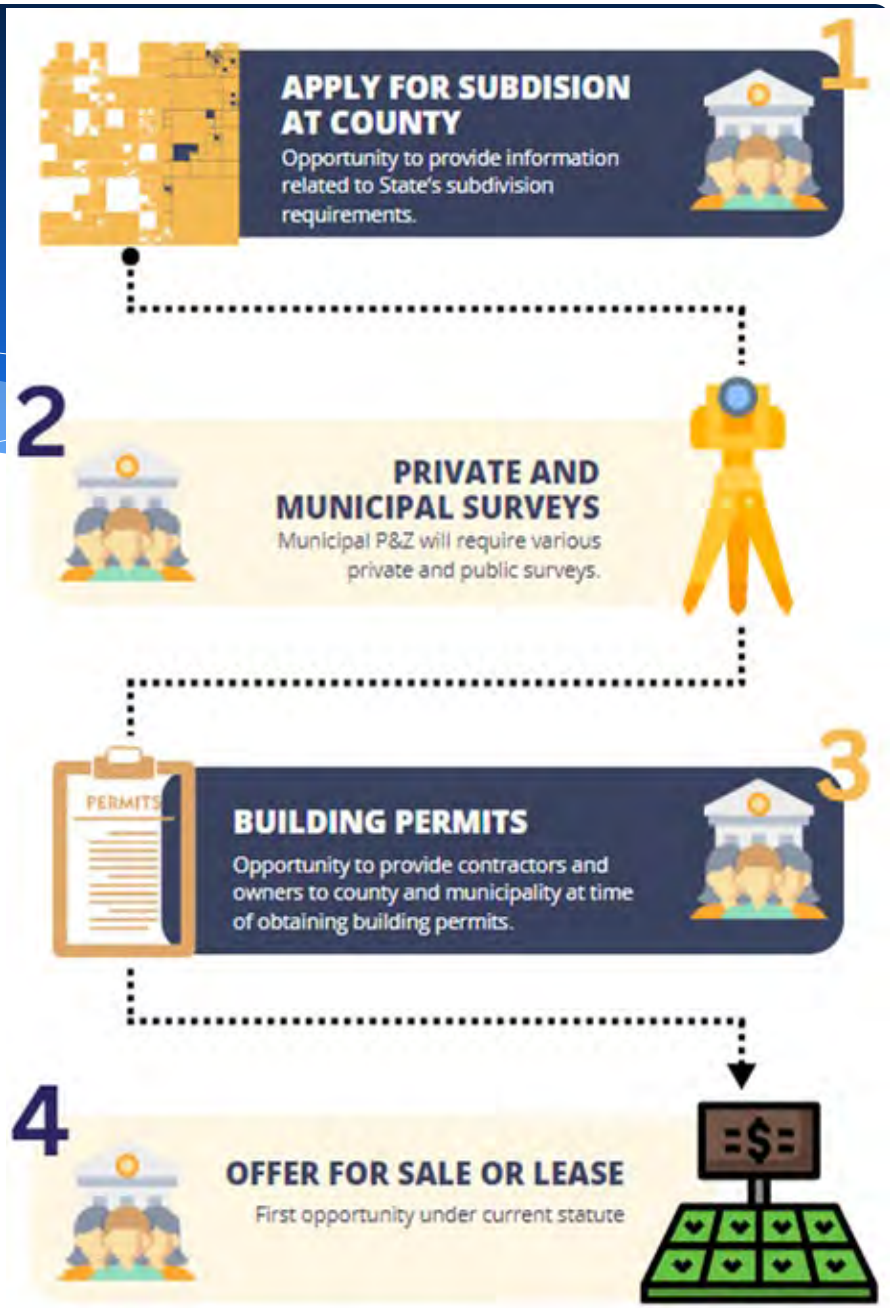
Increased Penalty

ADRE's ability to levy a civil penalty should be applied to ***each property*** within a subdivision, not the subdivision as a whole



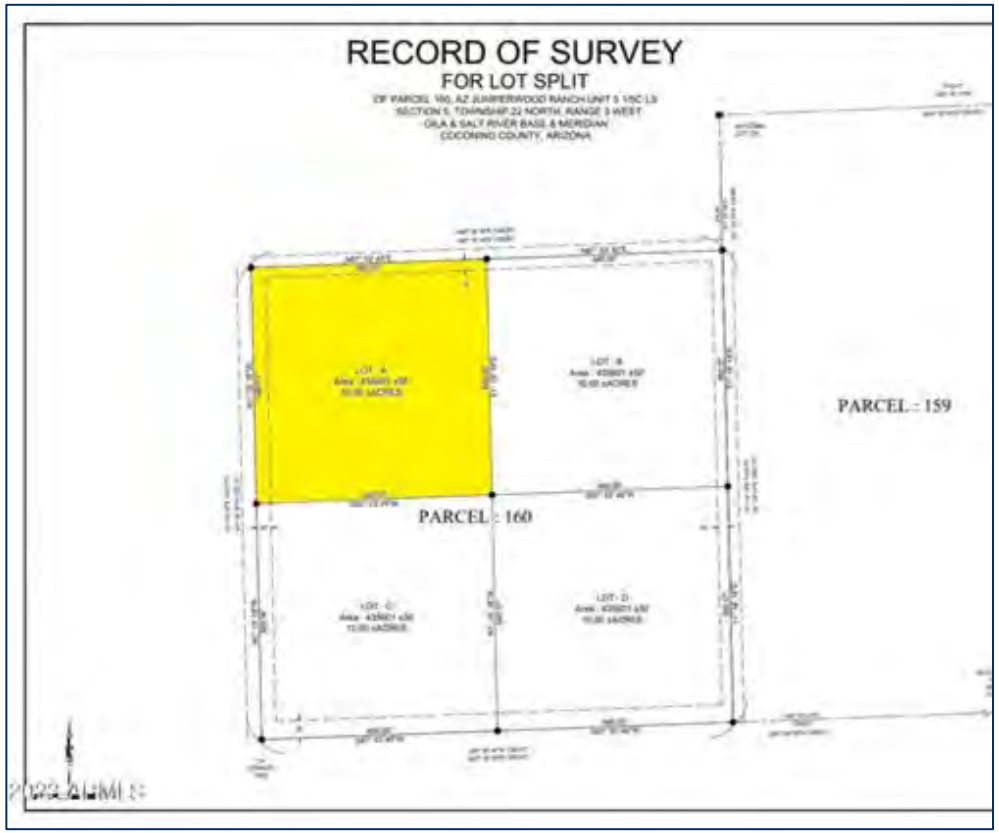
Timing of Enforcement

- In current statute, neither ADRE, counties or municipalities have jurisdiction to investigate subdivision violations until the properties are offered for sale or lease.
- Provide limited authority to counties/municipalities to collect ownership information and shared development cost information at the time of subdivision and building permit application.
- At the time of building permit application, require a subdivider to obtain a subdivision public report based on the ownership or shared development cost.



Number of Parcels

- Reduce legal lot splitting to 4 or fewer parcels
- 6 or more lots is the threshold today
  - 1937 - 5 lots or more
  - 1973 - 4 lots or more
  - 1994 - 6 lots or more
  - 1994 - 4 lots or more
  - 1995 - 6 lots or more



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IV. Next Steps

Upcoming Meetings

Next AWS Committee meeting:

Tuesday, October 17, 10:00 am, ADWR

Next Governor's Water Policy Council meeting: (tentative)

Friday, October 27, 2023, 1:00 pm, ADWR

V. Closing Remarks

Contact Information

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Governor's Water Policy Council webpage:
www.azwater.gov/gwpc

AWS Committee Member Comment Notes,
September 27, 2023

Governor's Water Policy Council – AWS Committee
Wednesday, September 27, 2023, 1:00 - 3:00 pm

Meeting Notes (key takeaways and questions)

Alternative Path to Designation

- Rep. Griffin – How will this concept apply to the Douglas AMA? Could there be unmet demand in the Douglas AMA even if they've adopted an adequate water supply requirement? What do we do about communities across the border that are pumping the aquifer?
- Olsen – What was the reason to choose 30% for the groundwater allowance?
- Rep. Griffin – Under this concept, will new development be required to pay for existing development? Will existing effluent be credited?
- Osmon – Sen. Sundareshan would like the percentage to be as robust as possible.
- Pearce – Can the provider use any combination of supplies during construction, even the new supplies?
- Pearce – This concept would be a seismic shift in Arizona water management. A year ago, developers were making sizeable investments under the pretense of a water supply, but then that was completely shut off. 30% isn't unreasonable but it is a large number and cut to the aquifer. On behalf of the developers, we need a transitional period and policy. The new supplies are expensive and take time. However, credit to Warren's group and ADWR on a major path forward, and Queen Creek and Buckeye are very interested.
- Dunham – This is creative thinking that works well in the AWS program, following all standards and procedures. It shows promise, and we should continue to pursue it. However, fixing some of its issues will open the door for private utilities. For EPCOR, using the 2021 volumes penalizes us. We voluntarily created new alternative supplies prior to 2021. Please use the total delivery volumes for the calculation. We also need to work with CAGRD to transition the new member service areas. The ACC won't allow for rate increases to cover the instant new fees. Finally, 30% is way too high. Providers need to make full use of new supplies, not 70%, to move away from CAGRD replenishment obligations.
- Patrick Adams – Would EPCOR benefit from the fact that their existing alternative supplies wouldn't be subject to the 30% requirement?
- Dunham – That doesn't help us. We can't use those new supplies anymore because they're already dedicated. There are no other new supplies for private utilities, and this wouldn't allow us to grow on groundwater.
- Tenney – Am I correct that the grandfathered groundwater is already being pumped and would continue otherwise? Under this framework, a designation would lead to less groundwater being used. We should pursue this concept and figure out the details. I do have questions about the impact on CAGRD. But the concept protects and reduces groundwater from the beginning.
- Ferris – This is a very thoughtful concept. It doesn't increase groundwater pumping, allows for unreplenished groundwater pumping to be reduced, and assists with new designations, which provide protection for water users. We will get to the details. Also, there is an impression that ADWR has wiped out investments, but they didn't. ADWR followed the law and its science, following evidence from the last 15 years that groundwater was limited in the Hassayampa basin. ADWR issued conditional designations and asked them to prove up their water sources, which never happened. Don't give the impression that ADWR did something evil; they just did their job.

- Dunham – I agree, if we keep the status quo then unreplenished groundwater pumping will continue to grow indefinitely. This concept stops that, which is a huge advantage for the aquifer.
- Meyers – Thank you for all your time and effort. Moving away from certificates toward designation is good for water management in the region. We're on the right path.
- Dent – I would like to discuss the impact on CAGRD replenishment with ADWR and stakeholders.
- Princell – I look forward to working with providers to understand the impact of this concept. Let's continue forward.

Wildcat Development

- Rep. Griffin – If you have 6 or more lots, you're a subdivider and must comply with the laws. 5 or fewer lots, you are not a subdivider. 25% for shared ownership is too high; it should be 1%. Any shared ownership should be a violation under statute. 50% for shared resources is ridiculous. In rural Arizona, we use the same resources. There may be only one contractor in the area. We should be going after the bad guys, not the good guys. I support the contiguous concept. My changes to the statute last year were meant to be $2,000 per lot, so that's an easy change to support. I can't agree to changing the limit to 4 – should be kept at 6. We strengthened the disclosure form, which lets buyers know of the status of the property and their responsibility. You may need to haul water, and some owners are fine with that. The government shouldn't stop them from buying that property.
- Singleton – I agree that we should be going after the bad actors. I have no strong opinion on the number of parcels, but why did it change so often?
- Dent – In the model, how is wildcat water accounted for? (exempt wells not included)
- Ferris – I thought the reason for this topic was to avoid another Rio Verde, where people buy lots, have expectations that aren't meant, and then ask for help. Rep. Griffin, how do we prevent that? Will people go to the legislature for a fix every time this happens? I agree that people can live where they want, but then they shouldn't put providers and utilities on the hook to fix a problem they didn't cause.
- Rep. Griffin – Originally in Rio Verde, a standpipe was offered for 30 years. People didn't think their water would be cut off, but maybe the water company went under. In those cases, the government would need to step in and take over. 99% of properties have disclosures that are signed, and the buyers are aware.
- Dunham – In the past, we've looked at wildcat and exempt wells in the AMAs and found that demands were so small that they didn't show up in the model – except in the Prescott AMA, where it is a major problem.
- Rep. Griffin – Meet with the relators so they can provide their feedback. Talk to the agents, not just their lobbyists.

AWS Committee Meeting Presentation,

October 17, 2023

Governor's Water Policy Council

Assured Water Supply Committee

October 17, 2023

Meeting Logistics

- Please note that this meeting is being broadcast via webinar and is being recorded.
- The meeting recording and materials will be posted to the Council's webpage (https://www.azwater.gov/gwpc).
- Only members of the Committee will be able to unmute themselves to participate in the meeting.
- Please identify yourself before speaking.
- *Technical issues? Please call the ADWR Help Desk at 602-771-8444 or email tickets@azwater.gov.*

I. Welcome

Agenda

I. Welcome
II. Committee Objective
III. Proposals Discussion
    a. Alternative Path to Designation
    b. Build to Rent
IV. Next Steps
V. Closing Remarks

II. Committee Objective

AWS Committee Objective

Review and make recommendations for updates to Assured Water Supply policies—legislatively, administratively, or by executive action—to address the challenges revealed by the modeling projections.

Deliverables: Policy recommendations that meet the objective and principles.

Focus: Development of high-priority, well-constructed proposals, keeping the timeline in mind.

Principles

- Proposals must protect the strength and integrity of the Assured Water Supply program.
- Proposals should enable future growth without reliance on mined groundwater.
- Proposals may not reduce the 100-year requirement or increase the depth to which groundwater may be pumped.
- Proposals must ensure there is water before growth.
- Proposals must protect consumers.

Current AWS Committee Proposals

- **Alternative path to designation**
- **Build to rent**
- Wildcat development

Other concepts raised for consideration by the committee remain options for discussion and development, including unreplenished industrial water use, ag-to-urban conversion, retiring grandfathered rights, and commingling.

III. Proposals Discussion

III. Proposals Discussion

Alternative Path to Designation

ADAWS: Progress to Date

- Significant support was expressed for the *Alternative Path to Designation of Assured Water Supply* (ADAWS) concept at the 09/27 meeting.
- Since the meeting, ADWR has answered questions and has continued to solicit and receive feedback.
- ADWR is working internally and with CAGRD and other stakeholders to explore and analyze considerations from a technical and legal standpoint.
- Concept can be considered a high-level proposal at this point, one that accomplishes the objective of reviewing and developing recommendations for updates to the AWS policies to address the challenges revealed by the modeling projections.

ADAWS: Today's Objective

- Briefly review highlights of the proposal
- Share responses to questions received in follow up to the last meeting, answer any additional questions, and have additional discussion
- Discuss next steps

ADAWS Purpose

ADAWS proposal addresses challenges identified as priorities by the committee:

- The commingling issue associated with certificates and alternative water supplies
- Unmet demand and/or exceedances of depth-to-water limit in the AMA model
- Incorporating new, non-groundwater supplies into a provider's water portfolio to reduce unmet demand and support new growth
- Facilitating near-term growth while future infrastructure is under development
- Creating a long-term benefit for the aquifer.

Barriers to Designation

The ADAWS proposal overcomes significant barriers that have impeded providers from becoming designated:

- Legacy groundwater use from subdivisions that predate the Assured Water Supply (AWS) rules or uses that fall outside of the subdivision definition
- Limited renewable supplies
- Historic barriers to cost recovery for the expense and effort of securing renewable supplies and applying for designation.

Allows providers to transition from reliance on groundwater to renewable supplies under a designation, including certain exemptions and groundwater allowances (similar to original DAWS).

Outcomes

- By enabling designation, the proposal gives providers more control and tools for managing water resources and demands.
- Addresses unconstrained pumping that is not subject to the Assured Water Supply Program.
- Reduces the unmet demand by reducing groundwater pumping over the 100-year period.
- Facilitates incremental growth and transitions the provider to using less groundwater and more alternative supplies, such as transported supplies, effluent, and surface water.

Overview of the Concept

1. **Existing groundwater pumping is grandfathered into the Designation**
   a. Physical availability is grandfathered based on 2021 groundwater use and issued certificates, subject to the [30%] substitution requirement in No. 2.
   b. A groundwater allowance is granted to help meet Consistency with Goal requirement.
2. **New Alternative water supplies that meet AWS requirements can be added to the Designation portfolio**
   a. A portion of the new supplies [30%] will be used to substitute for existing groundwater pumping to facilitate a transition away from groundwater.
3. **Expedited modification to add a supply during the term of the DAWS (For ADAWS and DAWS)**

Undesignated provider starting scenario

2,000 AF/yr	Unbuilt certificate demand *(replenished once built)*
8,000 AF/yr	Groundwater delivered – certificates *(replenished)*
10,000 AF/yr	Groundwater delivered – non-AWS/pre-1995 *(no replenishment or limit)*
20,000 AF/yr	**Total 2021 groundwater volume**

Provider applies for alternative designation and adds new alternative supplies

6,000 AF/yr	Effluent – will be stored & recovered within AOI
2,000 AF/yr	Surface water – will be delivered directly
8,000 AF/yr	**Total new alternative supplies**

New alternative supplies enable new growth & reduce 2021 groundwater volume

5,600 AF/yr	(70% of total)	New alternative supplies – future demands
2,400 AF/yr	(30% of total)	New alternative supplies – substitute for 2021 groundwater

Provider receives a grandfathered groundwater volume based on 2021 demands

17,600 AF/yr	= 20,000 af/yr (2021 GW volume) - 2,400 af/yr (substituted 2021 GW supply)
1,760,000 AF	**Total groundwater volume over the 100 period** (previously 2 MAF)

Benefit to the Aquifer: Example

Total 2021 groundwater pumping (no designation):

20,000 af/yr*

(2 MAF over 100 years)

- Without designation, unreplenished (non-AWS) groundwater uses could continue to grow, unconstrained, beyond the total 2021 pumping.

Total groundwater pumping after designation:

17,600 af/yr

(1.76 MAF over 100 years)

- Groundwater pumping would **not** increase.
- ***Initial benefit* to aquifer of 240,000 af** over 100 years through reduced GW pumping.
- ***Total benefit* to aquifer will be <u>greater</u>:**
  - Part of the 17,600 af/yr GW volume that was previously unreplenished will be replenished.
  - New alternative supplies may be added on an expedited basis, further reducing the 17,600 af/yr GW volume.

**Total GW use includes both unreplenished and replenished GW withdrawals.*

Example: Timeline with Expedited Modification

Year 0 | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Remainder of term

Initial Period (current state)

- As a Designated Provider, commingling is resolved
- Provider can now grow on new alternative supplies (including effluent)
  - 30% of alt supply offsets existing groundwater use
  - 70% of new supply supports new approved growth

Interim Period (pipeline under construction)

- Provider adds another alternative supply to its D&O through an expedited modification
  - infrastructure agreements and financing is in place
  - construction to be completed in 5 yrs
- Provider can now grow again on this additional alternative supply
  - 30% offsets existing groundwater use
  - 70% serves the new growth
- Provider may use any combination of supplies during interim period

Delivery Period (new supplies have arrived)

- Designation continues until end of term unless modified

ADAWS: Q&A

Existing Groundwater Demands

Q: When ADWR grandfathers in groundwater for purposes of physical availability, is that reflected as an annual rate of pumping or as an absolute quantity of groundwater?

A: Both.

ADWR's typical designation orders identify the volume of groundwater associated with a designation as both a 100-year volume and an annual average. Eg: "100,000 AF of groundwater, or an average of 1,000 AF per year over 100 years." This does not limit the volume of groundwater (or any other water supply) that the designated provider would be permitted to use in any single year.

The intent of the proposal is that the grandfathered groundwater volume included in the designation would be treated in the same manner as the groundwater volume in any other designation, except that it is subject to further reduction when new alternative supplies are added to the designation.

Additionally, like other designations, any groundwater used in any one year must be made consistent with management goal.

ADAWS: Q&A

Existing Groundwater Demands

Q: ***Are there ever instances when a provider could use its lump sum groundwater allowance to pump more groundwater in one year than it pumped in 2021?***

A: Yes. As with all designations, the provider has the flexibility to manage the water portfolio. In early years, while infrastructure is constructed, the provider may choose to rely more on groundwater.

Even so, a provider will not be able to use a disproportionate amount of its groundwater allowance because it must also enroll as a member service area with CAGRD and will be subject to minimum reporting requirements through that agreement.

Additionally, when the designation is renewed, the grandfathered groundwater volume will be reduced by the volume of groundwater pumped during the term of the designation.

ADAWS: Q&A

Existing Groundwater Demands

Q: If physical availability is expressed as an annual rate of pumping, does that mean that a provider would be limited in how much groundwater it could pump each year, regardless of its lump sum groundwater allowance?

A: No. A designated provider may decide what combination of supplies it will serve in any one year.

ADWR expects that the groundwater allowance will not cover all unreplenished pumping and that groundwater replenishment costs will provide a disincentive to using additional groundwater, particularly when the new alternative supplies included in the designation already meet AWS requirements.

If a provider used more of its 100-year groundwater volume in any one year, that volume would be subject to consistency with management goal requirements/ replenishment.

ADAWS: Q&A

Existing Groundwater Demands

Q: Is the grandfathered groundwater already being pumped and would continue otherwise?

A: Yes, it was being pumped as of 2021, and presumably, it would continue if the alternative path to designation were not offered.

Q: Does the physical availability that was grandfathered in diminish as the new alternative supplies come online?

A: Yes, 30% of each new alternative supply volume must be substituted for the grandfathered groundwater use. The grandfathered groundwater volume would be reduced by the 30% volume. The alternative supplies can then be used however the provider chooses. This will facilitate the transition to a reduced reliance on groundwater.

ADAWS: Q&A

New Alternative Supplies

Q: Does the 30/70 split mean that 70% of new water supplies must be used to serve new growth? If so, that could raise challenges or questions about how the water provider manages their water systems.

Or is the intent that 30% of the new supply would be used to reduce groundwater pumping and the provider could utilize the remaining 70% of the new supply however it chose to within its system?

A: Yes, a provider could choose to use more of its new alternative supplies for existing uses.

Additionally, even if 70% of the alternative supply is intended to serve new growth, the provider may serve the alternative supply to existing uses in lieu of groundwater until the new growth is in place.

ADAWS: Q&A

New Alternative Supplies

Q: Would the 30% substitution factor be applied to surface water supplies if they were already being served in 2021?

A: No. The 30% applies only to new alternative supplies, including surface water, that were not served in 2021.

Q: A portion of the new supply - proposed at 30% - is to be used to substitute for the existing groundwater in the designation. Please clarify that the 30% of the new supply is accounted towards the grandfathered groundwater pumping and not the groundwater allowance. Is that correct?

A: Yes, the 30% of the new supply would be deducted from the total grandfathered groundwater volume.

ADAWS: Q&A

New Alternative Supplies

Q: What was the reason to choose 30% for the groundwater allowance?

A: The intent is to strike a balance between the desire to support new growth and the need to reduce existing and approved groundwater uses in the long-term to protect AMA residents from unmet groundwater demands, as otherwise projected in the model. This is still being evaluated.

Q: Is there a point when 30% of the alternative supply is no longer directed to offset groundwater pumping?

A: The 30% requirement would no longer apply once a provider could qualify for a designation under the traditional designation rules, which would mean the provider is no longer using groundwater or the model no longer shows unmet groundwater demand.

Q: As a water provider brings on new supplies, would it be appropriate to consider the 30% amount decreasing overall or at least use a smaller percentage for the next supply of water?

A: ADWR has not considered decreasing the 30% amount because the goal is to reduce reliance on groundwater.

ADAWS: Q&A

CAGRD

Q: What is the mechanism to ensure that the provider does obtain a new supply? What will prevent the provider from just developing on groundwater and relying on the CAGRD?

Is it assumed that increasing CAGRD costs and other motivations will be enough of an incentive for the provider to seek their own supplies?

A: The volume of alternative supplies (including effluent), combined with the schedule of committed and projected demands, will determine the length of the designation. A provider must maintain sufficient water for current, committed, and at least two years of projected demands.

In order to maintain the designation going forward or to extend the term of the initial designation, the provider must bring in additional alternative supplies.

That being said, the increasing costs of CAGRD replenishment and limitations on groundwater availability are already incentivizing providers to seek alternative supplies.

Recap: ADAWS Proposal Overview

1. **Existing groundwater pumping is grandfathered into the Designation**
   a. Physical availability is grandfathered based on 2021 groundwater use and issued certificates, subject to the [30%] substitution requirement in No. 2.
   b. A groundwater allowance is granted to help meet Consistency with Goal requirement.
2. **New Alternative water supplies that meet AWS requirements can be added to the Designation portfolio**
   a. A portion of the new supplies [30%] will be used to substitute for existing groundwater pumping to facilitate a transition away from groundwater.
3. **Expedited modification to add a supply during the term of the DAWS (For ADAWS and DAWS)**

ADAWS Recommendation

Move the *Alternative Path to Designation of Assured Water Supply* proposal forward to the Governor's Water Policy Council for consideration as a recommendation to the Governor.

Including a recommendation that the proposal should be further developed through a stakeholder process led by ADWR.

III. Proposals Discussion

Build to Rent Development

Ben Alteneder
Chief Legislative Liaison

Build to Rent Development: Defined

- Commonly referred to as “single-family rentals”.
  - Market for a different type of community and homes available to renters.

- Residential development that does not meet the definition of a subdivision.
  - Lease term of 1 year or less.

Build to Rent Development: Challenge

- BTR communities with lease terms of 1 year or less are not under the consumer protections of the AWS program.
  - In all other aspects they are similar to a residential subdivision, including having common areas and other exterior water demands.

Goal: ensure that BTR communities are under the consumer protections of the AWS program and, for the purposes of water, treated equally with subdivisions.

Build to Rent Proposal

1. Define residential lease community (RLC)
   - 6 or more detached residential dwelling units on one or more lots, parcels or fractional interests.
   - Offered for the purpose of lease without regard to lease term; including lease terms of one year or less.
   - For purposes of the AWS program, an RLC is the same as a subdivision.

Build to Rent Proposal

2. Ensure all applicable fees are paid (CAGRD).

3. A City or County may approve a building permit for a RLC within an AMA if the units have obtained a certificate of assured water supply or a written commitment of water service from a designated municipality or private water company.

Build to Rent Proposal

1. Define residential lease community (RLC)
   - 6 or more detached residential dwelling units on one or more lots, parcels or fractional interests.
   - Offered for the purpose of lease without regard to lease term; including lease terms of one year or less.
   - For purposes of the AWS program, an RLC is the same as a subdivision.
2. Ensure all applicable fees are paid (CAGRD).
3. A City or County may approve a building permit for a RLC within an AMA if the units have obtained a certificate of assured water supply or a written commitment of water service from a designated municipality or private water company.

Build to Rent Recommendation

Forward the proposal for statutory changes to address Build to Rent challenges to the full Governor's Water Policy Council for consideration as a recommendation to the Governor.

The proposed changes would ensure that BTR communities are:

- Under the protections of the AWS program
- At parity with subdivisions when it comes to assured water supplies.

IV. Next Steps

Upcoming Meetings

Upcoming Governor's Water Policy Council meetings:

Friday, October 27, 2023, 1:00 pm, ADWR

Wednesday, November 29, 2023, 1:00 pm, ADWR *(tentative)*

Next AWS Committee meeting:

Tuesday, November 14, 10:00 am, ADWR *(tentative)*

VI. Closing Remarks

Contact Information

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Governor's Water Policy Council webpage:
www.azwater.gov/gwpc

Governor’s Water Policy Council Member Comment Notes, October 27, 2023

Governor's Water Policy Council
Friday, October 27, 2023, 1:00 - 3:00 pm

Meeting Notes

Alternative Path to Designation (ADAWS)

- Doba – Kudos to the committee for this proposal. There will be time for more dialogue throughout the process. Is this only available in AMAs with CAGRD? We could have another discussion for a backstop in areas like Prescott.
- Anderson – I disagree with "strong consensus" on this proposal. We support moving this forward to the Governor's Office, despite significant concerns. The Home Builders Association would like to be included in the stakeholder process, along with providers and analysis holders.
- Rep. Griffin – I have concerns with the 130% requirement for providers to bring in water. How long would an expedited modification take? Who does this apply to? Will the Douglas AMA lose adequate water supply determinations?
- Megdal – I appreciate Rob's statement that there wasn't a full consensus. If this moves forward with an expanded stakeholder process, would it come back to the AWS Committee or does it stay beyond the Council?
- Olsen – This is a long-term pathway for more sustainable growth. It addresses many of the AWS Committee issues in a strategic manner. There is more to be fleshed out by broadening the discussions and getting other voices involved. I fully support moving this forward.
- Tenney – There are many challenges with groundwater management in the state. The AWS program requires water before growth, and this proposal builds on that. There are other questions remaining about the size of the groundwater allowance and risks to CAGRD, but this is positive enough to move forward. I'm supportive of discussion with additional stakeholders. The proposal must continue to show that we're protecting groundwater, developing on renewable supplies, and being proactive. There are many generations to come after us that will rely on these resources.
- Singleton – This proposal isn't perfect, but now is the time to involve the potentially impacted parties. I recommend proceeding with the stakeholder process.
- Kmiec – I support moving this forward to the larger stakeholder process with ADWR. This is an interesting proposal, and I'd like to see how it develops.
- Sahid – I want to voice support to move this forward. The proposal is beneficial to the Trust, and I look forward to engaging with stakeholders.
- Ferris – I want to thank ADWR for its leadership on a tough issue and for taking the lead to develop this proposal. We can't do more in the committee, and I support developing the proposal in a stakeholder process and rulemaking process.
- Rep. Travers – This proposal makes me very hopeful. I'm looking forward to stakeholder comments. We can't lose the message or lower any of the thresholds or parameters during the process. We have something good to work with here, and I look forward to hearing more.
- Princell – I support moving this forward to work with providers and landowners. We should ensure a smooth transition and focus on protecting the aquifer. We want a speedy process because the faster we get approval, the faster providers can secure new supplies.
- Sen. Sundareshan – Thank you to the contributors for a promising proposal that represents a path to designation and growth. This is a way to allow providers to get designated and manage their portfolio. I support a stakeholder process to get input from those not in the room. I'll follow

the process closely to make sure that the proposal doesn't get weakened. I would prefer a percentage as high as 50% but understand that this is a compromise process.

- Burns – I support moving this forward. It addresses commingling and provides a pathway for new supplies.
- Paul – This proposal encourages new designations, which come with a host of benefits. We support moving this forward.
- Kelley – I commend the committee on their work. The proposal is worthy of further discussion. I have concerns regarding the pressure this will put on other water supplies and would like to see the CAGRD impact analysis, but I'm willing for those to play out.
- Anderson – We have concerns with the 30% burden on new development, the lack of a transition period, the long implementation period, analyses being wiped out, and CAGRD risks. But we are appreciative of ADWR working with us and support moving it to the stakeholder process.
- Burman – We support moving this forward to a thoughtful stakeholder process. We will continue to work with the Governor's Office, ADWR, the CAP board, and other stakeholders to answer questions.
- Kuzdas – There is a lot of work and creativity that went into this. It meets multiple needs and seems promising. I'm supportive of this process.
- Dunham – I want to thank ADWR and the committee for their hours of work on this proposal. I have a few comments to make. The 30% cut to the aquifer is way too high. Private utilities can't cover that cost. We need to phase in CAGRD replenishment of ML converted to MSA because private utilities can't justify those rate increases (based on voluntary actions) to the ACC. We need a transition period for those moving from ADAWS to a typical DAWS. Using 2021 pumping volumes for the groundwater allowance penalizes providers who were already using alternative supplies. We need flexible, reasonable requirements because the costs go through to residents. If the requirements are too onerous, no one will take advantage of this voluntary program. However, this is a workable proposal, and it should go through the stakeholder process to hear from all entities.

Build to Rent (BTR)

- Rep. Griffin – Single-family residential homes are the only ones currently being penalized. There is a critical housing shortage in the state. My bill from last year contains all the proposed language except certifications, which we can discuss. I've got a new bill file open. We should grandfather in current investments so to avoid financial issues.
- Doba – This is a good proposal for closing loopholes and addressing parity. Other AMAs don't have CAGRD and so I want to make sure this applies in areas like Prescott.
- Megdal – What happens to a BTR property without an assured water supply that is later sold?

Rural GW Management Framework

- Rep. Griffin – I have heard from many people in the state and I ask to submit this letter from county supervisors across the state. I've had an enormous amount of calls on this topic. I will be holding statewide meetings to gather input on the framework. I'm also submitting an updated copy of the basin management plan proposed by Sen. Kerr.

- Sen. Sundareshan – I'm glad to see mandatory measuring and reporting included in this, but we might want to include exempt wells under that because their pumping can add up.
- Megdal – I'm an advocate for more robust listening sessions. Will Rep. Griffin be letting the Council know when and where those are?
- Udall – Thank you for the time and willingness of those to discuss and find consensus on these difficult topics. I appreciate the extra meeting time, as well. I look forward to our next meeting and to hearing from more stakeholders.

ATTACHMENT C

KATIE M. HOBBS
GOVERNOR

THOMAS BUSCHATZKE
DIRECTOR

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November 29, 2023

The Honorable Katie M. Hobbs
Governor
State of Arizona
1700 W. Washington St.
Phoenix, AZ 85007

Dear Governor Hobbs,

It is my pleasure to transmit to you recommendations from your Water Policy Council that address the Assured Water Supply program and the management of rural groundwater. The recommendations are impactful policy prescriptions that add to the sustainability of Arizona's water supplies now and in the future.

On May 17, 2023, you convened 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, the Arizona legislature, and more. At this inaugural meeting, the Council was charged with two objectives: developing proposals and recommendations for better management of rural groundwater and producing a package of policy recommendations which strengthen our Assured Water Supply Program and ensure that we protect our groundwater resources while enabling continued, sustainable growth. With these charges laid out before us and a deadline to submit proposals to you by the end of the year, the Governor's Water Policy Council embarked on a process to develop consensus policy recommendations in a robust, inclusive, and transparent manner.

Two committees were established to focus on each issue: an Assured Water Supply Committee and a Rural Groundwater Management Committee, and Council members were given the option to choose which Committee they wanted to participate in. The Council and its committees met twenty times over the past six months, and members were asked to attend each meeting in person whenever possible, with virtual attendance options made available. Members were asked to reach out to their constituents throughout the process to receive additional perspectives on the Assured Water Supply Program and the rural groundwater management challenges and potential solutions, and to bring those perspectives to each meeting. Committee and Council meetings were livestreamed and open to the public for viewing.

ADWR chaired each Committee and Council meeting, developing agendas, providing technical presentations, and drafting documents for Council member review, revision, and discussion. ADWR staff, in parallel with the Committee and Council meetings, met with members individually to receive input, discuss perspectives, and revise documents to reflect the input. Revisions were shared with Committee members. All verbal and written communications by Committee members associated with the recommendations have been recorded and acknowledged by ADWR. All Committee meeting communications have been considered in the final drafting of these recommendations.

Consensus-based approval of the recommendations was first achieved by each Committee, and then the recommendations were brought to the Council for their discussion, consideration, and final approval. Support from the Council for the final five recommendations contained in this letter was achieved at the October 27, 2023, and the November 29, 2023, Council meetings.

The Council's Assured Water Supply Program recommendations provide a launch point and guidance for drafting new rules for an Alternative Designation of Assured Water Supply (ADAWS) program. This ADAWS concept creates a pathway for water providers historically reliant on groundwater to grow incrementally on alternative supplies while reducing groundwater mining. The Assured Water Supply recommendations also provide a path for closing statutory loopholes associated with "wildcat" subdivisions and "Build-to-Rent" developments.

The Council's Rural Groundwater recommendations provide a foundational framework to craft legislation for creating a new groundwater management program for rural Arizona, filling a water management gap that has gone unaddressed for decades and providing an opportunity for rural communities and water users to benefit from improved water management and protection. Finally, the Council has developed recommendations to bolster the measuring and reporting of water use and monitoring of groundwater conditions throughout the state.

The full text of the Council's recommendations is included in this letter for your review, and the Department is preparing a full report of the Council's activities. Thank you for your leadership and commitment to protecting Arizona's water supplies. I look forward to continuing to build upon the work we have achieved thus far.

Sincerely,

Tom Buschatzke
Director, Arizona Department of Water Resources
Chair, Governor's Water Policy Council

Alternative Path to Designation Proposal

Background

Many private utilities and smaller municipalities that would like to pursue a Designation of 100-year Assured Water Supply (DAWS) face hurdles to doing so, including:

- Legacy groundwater use from subdivisions that predate the Assured Water Supply (AWS) rules or uses that fall outside of the subdivision definition.
- Limited renewable supplies.
- Historic barriers to cost recovery for the expense and effort of securing renewable supplies and applying for designation.

When the original AWS rules were promulgated, existing providers at the time were allowed to transition from reliance on groundwater to renewable supplies under a DAWS, including certain exemptions and groundwater allowances.

Purposes of Proposal

The Alternative Pathway to Designation proposal seeks to address the following challenges:

- The commingling issue associated with Certificates and alternative water supplies.
- Unmet demand and/or exceedances of depth-to-water limit in AMA model.
- Incorporating new, non-groundwater supplies into a provider's water portfolio to reduce unmet demand and support new growth.
- Facilitating near-term growth while future infrastructure is under development.
- Creating a long-term benefit for the aquifer.

ADWR generated this proposal based on stakeholder feedback and suggestions from the AWS Committee related to "Hybrid" and "Transitional" Designation concepts.

Overview of the Proposal

Existing groundwater pumping is grandfathered into the Designation. Physical availability is grandfathered, and a groundwater allowance is granted to provide Consistency with the Goal.

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 [30%] will be used to substitute for existing groundwater pumping to facilitate a transition away from groundwater.

Existing Groundwater Demands: Physical Availability

The following groundwater volumes would be "grandfathered in" for purposes of physical availability:

- Issued Certificates of Assured Water Supply; and
- Existing groundwater pumping and non-groundwater recovered outside the area of impact (AOI) based on annual reporting for 2021.

Analyses of Assured Water Supply are not included. The grandfathered volume is subject to reduction under the provisions related to alternative supplies. New growth will be supported by alternative supplies.

Existing Groundwater Demands: Consistency with the Management Goal

For the existing groundwater demands that would be grandfathered into the new Designation, Consistency with the Management Goal will be met by:

- The water provider would enroll as a member service area with CAGRD.
- The water provider would receive a lump sum groundwater allowance, based on deliveries in 2021[1].

The water provider will then decide how to manage groundwater allowance usage, water supply deliveries, CAGRD reporting, and billing individual customers for CAGRD assessments.

New Alternative Supplies

"New Alternative Supplies" refers to water supplies other than groundwater withdrawn in the AMA that were not served in 2021, including effluent, surface water, CAP water, transported groundwater. They may be delivered directly or stored and recovered within the area of impact.

New Alternative Supplies may be added to the Designation to serve new growth. The grandfathered groundwater volume will be reduced by [30%] of the new supplies to facilitate an incremental transition away from groundwater over time.

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.

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 may be extended to private water providers.

Expedited Modification for Incremental Growth

During the designation term, the Department will allow for an expedited modification to include an additional non-groundwater supply. For an expedited modification, the Department would review only AWS requirements for that additional supply and the demand schedule. ADWR rules could be amended to allow expedited modifications to all designated providers.

[1] 2021 was used because the Phoenix AMA model is based on 2021 reporting data.

Designation Term / Modification

The designation has an initial term of no greater than 15 years, which may be renewed or modified for additional terms of up to 15 years, subject to demonstrating that the Designation requirements are met. If modified or extended, the grandfathered groundwater volume will be reduced by volume of reported pumping since the most recent designation was issued, consistent with the existing AWS rules. A provider may continue under alternative designation framework indefinitely.

Overview

The Alternative Pathway to Designation proposal 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 facilitating incremental growth and a steady transition from groundwater to alternative supplies such as surface water, effluent, or transported supplies.

Build to Rent Proposal

1. Define residential lease community (RLC)
    a. 6 or more detached residential dwelling units on one or more lots, parcels, or fractional interests.
    b. Offered for the purpose of lease without regard to lease term; including lease terms of one year or less.
    c. For purposes of the AWS program, an RLC is the same as a subdivision.
2. Ensure all applicable fees are paid (CAGRD).
3. A City or County may approve a building permit for an RLC within an AMA if the units have obtained a certificate of assured water supply or a written commitment of water service from a designated municipality or private water company.

"Wildcat" Development Proposal

Governor's Water Policy Council

The Governor's Water Policy Council recommends the following statutory changes to address "wildcat" developments:

1. Strengthen subdivision law by clarifying that any entity, individual or combination thereof with any ownership in six or more lots offered for sale or lease in one or more adjoining sections of land is evidence of "acting in concert".
2. Clarify the definition of "contiguous" when evaluating if nearby lots constitute a subdivision by:
    a. Using one or more adjoining Sections of Land as the defined geographic area for considering whether lots are considered contiguous.
    b. Clarifying that lots separated by a "street" or "road" are contiguous.
    c. Retaining county, state, federal highways and "natural or man-made barriers" that divide lots as non-contiguous.
3. Apply civil penalties to each lot instead of the unauthorized subdivision as a whole.
4. Provide counties and municipalities authority to:
    a. Collect ownership information at the time of application for subdivision and building permits, and;
    b. Require a subdivider to obtain a subdivision public report based on ownership findings.

"Rural Groundwater Management Area" Framework Proposal

The Governor's Water Policy Council recommends that the "Rural Groundwater Management Area" Framework be submitted to the Governor as a foundation for a new groundwater management program in rural Arizona.

DESIGNATION OF "RURAL GROUNDWATER MANAGEMENT AREA"

1. **ADWR Initiation Criteria**
    a. Director has the option to initiate a "Rural Groundwater Management Area" designation process.
    b. The criteria to initiate should not be more onerous than an AMA.
        i. Should be created when there has been a significant decrease in groundwater indicators over time and access to groundwater supplies is being threatened.
2. **Local Initiation Process**
    a. Process can be initiated by county board of supervisors resolution(s) or petition by percentage of area registered voters.
3. **Hearing and Designation**
    a. ADWR to conduct a hearing process, similar to an AMA or INA, prior to a decision on designation.
    b. Director has final designation authority.
4. **Interim Pause**
    a. There is a need for a pause on groundwater use expansion that begins when a "Rural Groundwater Management Area" is designated and continues until the area Management Plan is approved by ADWR.
        i. No new non-exempt wells within area boundaries, with exceptions for supplies necessary for the protection of human health and safety.

ACKNOWLEDGEMENT OF EXISTING USES

1. There is a need to document current and historical groundwater uses and users if a "Rural Groundwater Management Area" is designated.
    a. Applies to all sectors and water use types served by non-exempt wells.
    b. Need sufficient information to make an "acknowledgement" determination.
2. The process to establish an "acknowledgement" should be more streamlined than the AMA application process.
3. Is subject to conservation or efficiency measures or other actions identified in the area Management Plan needed to achieve the area Goal(s).

4. Should provide flexibility for water users and the local economy while achieving the area Goal(s).

COUNCIL DUTIES

1. **Required Duties**
    a. Make a complete record of its proceedings that are open to public review.
    b. Respectfully cooperate with federally recognized Tribes, cities, towns, counties, water providers[2], and other local, state, or federal agencies or organizations within the area to engage in coordinated regional planning.
    c. Coordinate with ADWR in creating area Goal(s) and Management Plan that address the needs of the local basin.
        i. Request technical assistance from ADWR.
    d. Recommend and send to the Director the area Goal(s) and Management Plan.
        i. ADWR issues final approval of Goal(s) and portions of Management Plan to be implemented by ADWR, striking illegal and unconstitutional provisions and recommending against impractical provisions.
2. **Optional Duties**
    a. Gather additional information and data.
    b. Establish a steering committee, advisory committee, or other structure to solicit and receive participation, comment, and advice from residents and other interested parties regarding the development and operation of the area Management Plan.
    c. The Council may have other duties, responsibilities, and capabilities, to be finalized in legislation.

AREA GOALS

1. Each "Rural Groundwater Management Area" must have at least one Goal, with all Goals tied to the needs and conditions of the local area.
    a. The Goal(s) must address the groundwater conditions and criteria identified when ADWR designated the "Rural Groundwater Management Area".
    b. The Goal(s) will remain the same throughout the duration of the "Rural Groundwater Management Area".
2. The Council must draft and recommend Goal(s) in consultation with ADWR.
    a. The Council should respectfully cooperate with federally recognized Tribes, cities, towns, counties, water providers, and other local, state, or federal agencies or organizations within the area when drafting Goals.

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[2] Throughout this document, "water providers" refers to all entities that provide water to end users, such as private water companies, irrigation districts, and ditch companies.

b. Director issues final approval of Goal(s).

AREA MANAGEMENT PLAN

1. **The Area Management Plan Shall Include:**
   a. One or more management Goals for the area, approved by the Director.
   b. A description of the appropriate physical and socioeconomic conditions in the area and how the Goal(s) relate to those conditions.
   c. Summary and consideration of other relevant government management plans currently in place in the area, including tribal, federal, state, and local governments.
   d. Methods to monitor and report on progress toward the Goal(s).
   e. Measuring and annual reporting for non-exempt wells in the area.
   f. Rules governing well location.
   g. Mandatory water conservation programs for all sectors.
2. **The Area Management Plan May Include:**
   a. Other water management practices or programs within ADWR's statutory authority deemed appropriate by the Council for achieving the Goal(s), with approval by and coordination with ADWR or other entities as necessary.
   b. Recommended (not mandated) supplemental water conservation and management actions for implementation by cities, towns, counties, water providers, and other public agencies within the area.

COUNCIL MEMBERSHIP

1. **Council Members**
   a. The Council shall consist of no fewer than five and no more than nine members.
   b. No more than one member may reside outside the area boundaries.
   c. Membership should represent all major water use sectors within the area, such as agricultural, industrial, and municipal users.
   d. The Council must include some number of at-large members to meet the specific needs of the local economy, population, and water users of relevant sectors.
2. **Appointment Process**
   a. Members must be appointed.
   b. Members shall be appointed from lists of recommended individuals submitted by federally recognized Tribes, cities, towns, counties, water providers, and state legislators within the area boundaries.
   c. Appointed based on knowledge of, interest in, and experience related to the condition, development, or use of water within the area.
   d. Members serve five-year terms, with member terms staggered.

SUNSET AND REVIEW

1. Every ten years after the designation, the Director shall review whether the conditions for designating the "Rural Groundwater Management Area" still exist.
2. If the Director determines that the area Goal(s) have been achieved, the Director may rescind the "Rural Groundwater Management Area" designation after following the same notice and hearing procedures that were used for the initial designation process.
3. Unless the "Rural Groundwater Management Area" is rescinded by the Director, the Council shall review and either recommend to readopt the existing area Management Plan for an additional term of ten years or draft and recommend a new Management Plan.

Rural Groundwater Measuring and Reporting Proposal

The Governor's Water Policy Council recommends the following actions to enhance the non-regulatory assessment of groundwater conditions and use across the rural areas of the state:

1. ADWR should pursue additional measuring, monitoring, and collection of groundwater data to more fully assess basin aquifer conditions.
2. ADWR should investigate the utilization of emerging technologies, such as remote sensing, to analyze conditions and to supplement water use data.
3. ADWR should provide financial assistance for non-exempt well measuring devices in unregulated areas of the state in exchange for voluntary annual reporting from well users.
4. ADWR should provide financial assistance for non-exempt well measuring devices in newly regulated areas of the state.

ATTACHMENT D

PINAL ACTIVE MANAGEMENT AREA FOURTH MANAGEMENT PLAN

December 14, 2020

PROTECTING ARIZONA'S WATER SUPPLIES *for* ITS NEXT CENTURY

CHAPTER FIVE: MUNICIPAL

5.3.8 Regulatory Requirements for All Municipal Providers

The following requirements have been established for all municipal providers: individual user requirements, distribution system requirements and monitoring and reporting requirements. Each is described in this section.

5.3.8.1 Individual User Requirements

An individual user is a person who receives water from a municipal provider for non-irrigation use. For the 4MP, the director is required to establish "additional conservation requirements for non-irrigation uses..." (A.R.S. § 45-567 (A)(2)). ADWR has instituted a prohibition on certain turf-related facilities larger than 90 acres for the 4MP, and changes were made to the conservation requirements for the turf and large-scale power plant subsectors as well. Details can be found in Chapter 6 of this plan. In the 3MP, individual user requirements were established for turf-related facilities, publicly owned rights-of-way and large cooling towers. These requirements have been retained for the 4MP.

Either the individual user or the municipal provider serving the individual user is responsible for complying with the individual user requirement. See section 5-610 for determining responsibility for compliance with the individual user requirements.

5.3.8.2 Distribution System Requirements

Lost and unaccounted for water is defined as the total water from any source, except direct use treated effluent, withdrawn, diverted or received in a year minus the total amount of authorized deliveries made by the municipal provider in that year. Lost and unaccounted for water includes line leakage, meter under-registration, evaporation or leakage from storage ponds or tanks, system and hydrant leaks or breaks and illegal connections.

All municipal providers are required to meet an efficient lost and unaccounted for water standard in their service areas. Lost and unaccounted for water will be determined for each municipal provider based on the total quantity of metered and unmetered water deliveries and the total water pumped, received or diverted by the municipal provider for each calendar year, excluding direct use treated effluent. Small municipal providers must maintain lost and unaccounted for water at or below 15 percent. Large municipal providers are required to maintain their system not to exceed 10 percent lost and unaccounted for water. Large untreated water providers are required to either line all canals used to deliver untreated water to the provider's delivery points with a material that allows no more lost water than a well-maintained concrete lining, or operate and maintain its distribution system to limit lost and unaccounted for water at or below 10 percent.

For the fourth management period, ADWR will allow providers to exclude water from the lost and unaccounted for water calculation that is metered or estimated using approved estimating procedures and used pursuant to other regulatory requirements such as well purging and line flushing. Providers may also exclude estimated water uses such as construction (truck loads for dust control) or fire services, but all other uses of water within a distribution system must be metered. Appendix 5B provides a complete list of uses that are considered in the lost and unaccounted for water calculation and those uses which can be estimated to determine the volume.

FOURTH MANAGEMENT PLAN

PHOENIX ACTIVE MANAGEMENT AREA

2010-2020

1110 W. Washington Street, Suite 310, Phoenix, AZ 85007

CHAPTER FIVE: MUNICIPAL

Either the individual user or the municipal provider serving the individual user is responsible for complying with the individual user requirement. See section 5-610 for determining responsibility for compliance with the individual user requirements.

5.3.8.2 Distribution System Requirements

Lost and unaccounted-for water is defined as the total water from any source, except direct use treated effluent, withdrawn, diverted or received in a year minus the total amount of authorized deliveries made by the municipal provider in that year. Lost and unaccounted-for water includes line leakage, meter under-registration, evaporation or leakage from storage ponds or tanks, system and hydrant leaks or breaks, and illegal connections.

All municipal providers are required to meet an efficient lost and unaccounted-for water standard in their service areas. Lost and unaccounted-for water will be determined for each municipal provider based on the total quantity of metered and unmetered water deliveries and the total water pumped, received, or diverted by the municipal provider for each calendar year, excluding direct-use treated effluent. Small municipal providers must maintain lost and unaccounted-for water at or below 15 percent. Large municipal providers are required to maintain their system not to exceed 10 percent lost and unaccounted-for water. Large untreated water providers are required to either line all canals used to deliver untreated water to the provider's delivery points with a material that allows no more lost water than a well-maintained concrete lining or operate and maintain its distribution system to limit lost and unaccounted-for water at or below 10 percent.

For the 4MP, ADWR will allow providers to exclude water from the lost and unaccounted-for water calculation that is metered or estimated using approved estimating procedures and used pursuant to other regulatory requirements such as well purging and line flushing. Providers also may exclude estimated water uses such as construction (truck loads for dust control) or fire services, but all other uses of water within a distribution system must be metered. Appendix 5C provides a complete list of uses that are considered in the lost and unaccounted-for water calculation and those uses which can be estimated to determine the volume.

5.3.8.3 Monitoring and Reporting Requirements

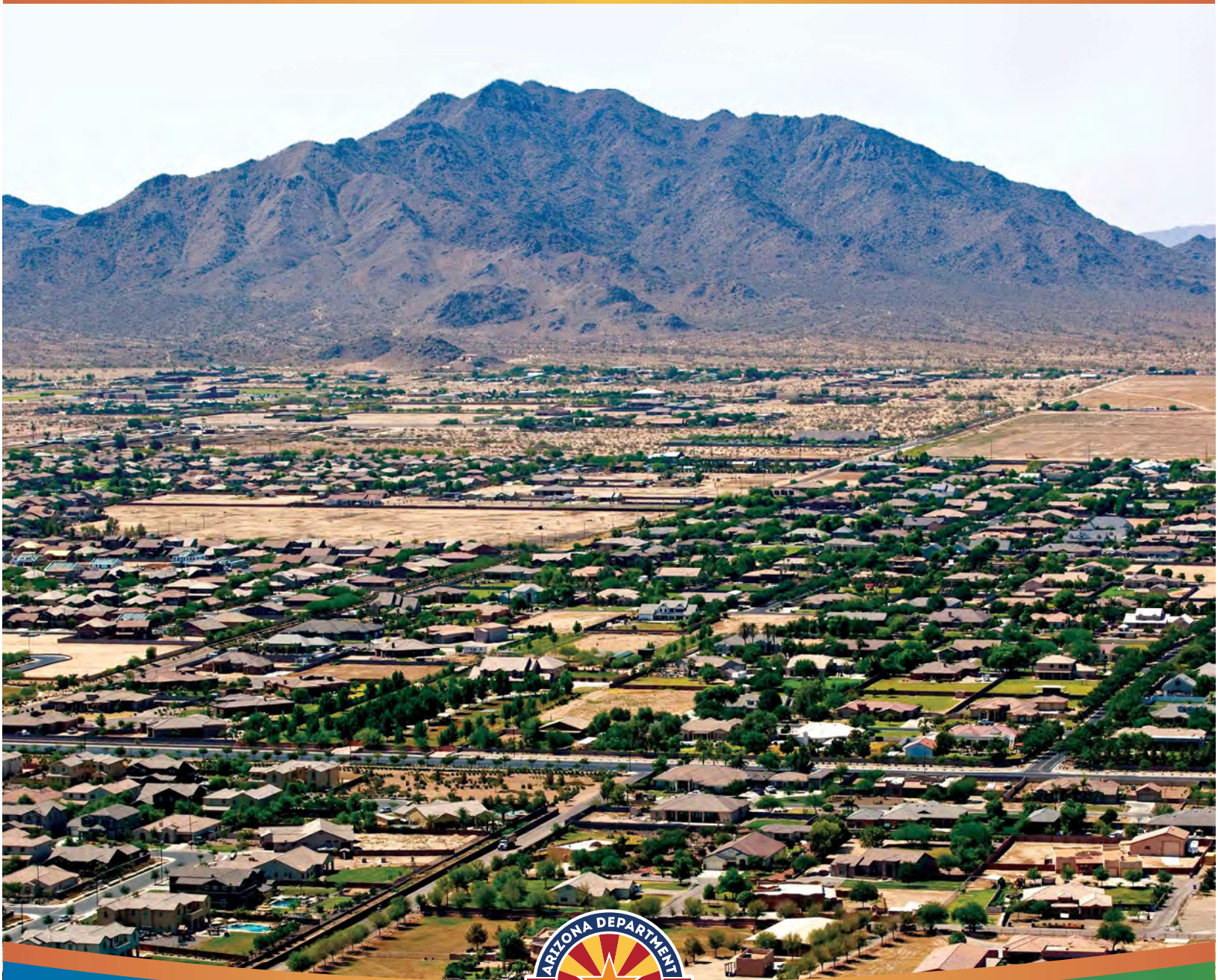
All municipal providers, including providers regulated under the NPCCP, are required to annually report to ADWR:

1. information on the total quantity of water withdrawn, diverted or received that enters the groundwater distribution system during the year;
2. total quantity of water used within the service area and the total volume of water delivered for various municipal purposes;
3. total number of housing units by unit type added to the service area from December 31 of the previous calendar year to December 31 of the reporting year;
4. all movements of water made by the provider during the year, including water accepted from another entity (received) that was subsequently sent (delivered) to be stored at a GSF or underground storage facility and stored water that was recovered during the year, whether annual or long-term credit recovery, regardless of the water type;
5. volume of water ordered from an irrigation district that was released by the irrigation district from a storage or distribution facility but not accepted by the municipal provider or delivered to any other person;
6. an updated water-service area and distribution-system map delineating all distribution lines greater than four inches, all treatment works and all well sites;

FIFTH MANAGEMENT PLAN

PINAL ACTIVE MANAGEMENT AREA

2020-2025



EMAIL: MANAGEMENTPLANS@AZWATER.GOV
TEL: 602-771-8585

ADDRESS: 1110 W. WASHINGTON STREET,
SUITE 310, PHOENIX, AZ 85007

CHAPTER FIVE: MUNICIPAL

5.1 INTRODUCTION

Municipal water providers are cities, towns, private water companies, and irrigation districts that deliver groundwater for non-irrigation uses (such as residential, commercial, governmental, industrial and construction uses). Municipal water providers also can include well co-operatives, mobile-home parks, or improvement districts. ADWR regulates those water providers serving more than 250 acre-feet (AF) of water for non-irrigation use annually as large municipal providers. Those providers serving 250 AF or less annually are regulated as small municipal providers. Some municipal water providers deliver water that is untreated for landscape/flood irrigation purposes only. ADWR regulates a municipal provider who delivers 100 AF or more of untreated water annually for landscape/flood irrigation as a large untreated provider. Municipal providers who deliver less than 100 AF of untreated water per year and only deliver water for landscape/flood irrigation are considered small untreated providers and are included in the small municipal water provider category. There are 10 large municipal providers and 32 small municipal providers in the Pinal Active Management Area (PAMA). A summary of municipal water supply and demand in the PAMA can be found in Chapter 2, and more detailed data can be found on the AMA Data webpage (https://new.azwater.gov/ama/ama-data). The online data will be updated annually.

The Municipal Conservation Programs for the PAMA have been updated for the Fifth Management Plan (5MP). The Total Gallons Per Capita per Day (GPCD) Program and the Non-Per Capita Conservation Program (NPCCP) have been substantially modified as compared to the Fourth Management Plan (4MP) and are designed to reduce withdrawals of groundwater. The Alternative Conservation Program (ACP) and the Institutional Provider Program (IPP) are not included in this plan. The programs for small providers and large untreated providers are unchanged from the 4MP. The conservation requirements contained in this chapter will become effective on January 1, 2025. Each program is described in this chapter, and the legal language pertaining to each program can be found in section 5.11.

5.2 MUNICIPAL CONSERVATION PROGRAM: HISTORY AND BACKGROUND

The Municipal Conservation Program for the PAMA 5MP is designed to assist municipal providers with increasing water conservation and efficiency in order to move toward the goal of preserving water supplies for future non-irrigation uses by reducing withdrawals of groundwater. Efficient use of groundwater, reduction in total water use, and offsetting

the entire acre, including associated structures, but not including any acres regulated as a turf-related facility. A large untreated water provider also must meet the individual user requirements, distribution system requirements, and the monitoring and reporting requirements.

5.8 CONSERVATION REQUIREMENTS FOR SMALL MUNICIPAL PROVIDERS

During the fifth management period, small providers will continue to be required to minimize waste of all water supplies, maximize efficiency in outdoor watering, encourage reuse of water supplies, and improve water-use efficiency as feasible. Small providers must also comply with lost and unaccounted for standards not to exceed 15 percent, as well as certain other reporting requirements described below.

5.9 REGULATORY REQUIREMENTS FOR ALL MUNICIPAL PROVIDERS

The following requirements have been established for all municipal providers: individual user requirements, distribution system requirements, and monitoring and reporting requirements.

5.9.1 INDIVIDUAL USER REQUIREMENTS

An individual user is a person who receives water from a municipal provider for non-irrigation use. For the 5MP, the director is required to establish "additional conservation requirements for non-irrigation uses..." (A.R.S. § 45-568(A)). Additionally, there is a prohibition on certain turf-related facilities larger than 90 acres. Either the individual user or the municipal provider serving the individual user is responsible for complying with the individual user requirements outlined in the appropriate subsector program in Chapter 6. See section 5-1110 for determining responsibility for compliance with the individual user requirements.

5.9.2 DISTRIBUTION SYSTEM REQUIREMENTS

Lost and unaccounted for water is defined as the total water from any source, except direct use effluent, withdrawn, diverted or received in a year, minus the total amount of authorized deliveries made by the municipal provider in that year. Lost and unaccounted for water includes line leakage, meter under-registration, evaporation or leakage from storage ponds or tanks, system and hydrant leaks or breaks, and illegal connections.

All municipal providers are required to meet an efficient lost and unaccounted for water standard in their service areas. Lost and unaccounted for water will be determined for each municipal provider based on the total quantity of metered and unmetered water

deliveries and the total water pumped, received, or diverted by the municipal provider for each calendar year, excluding direct use effluent. Small municipal providers must maintain lost and unaccounted for water at or below 15 percent. Large municipal providers are required to maintain their system not to exceed 10 percent lost and unaccounted for water. Large untreated water providers are required to either line all canals used to deliver untreated water to the provider's delivery points with a material that allows no more lost water than a well-maintained concrete lining or operate and maintain its distribution system to limit lost and unaccounted for water at or below 10 percent.

For the 5MP, ADWR will allow providers to exclude water from the lost and unaccounted for water calculation that is metered or estimated using approved estimating procedures and used pursuant to other regulatory requirements such as well purging and line flushing. Providers also may exclude estimated water uses such as construction (truck loads for dust control) or fire services, but all other uses of water within a distribution system must be metered. Appendix 5A provides a complete list of uses that are considered in the lost and unaccounted for water calculation and those uses which can be estimated to determine the volume.

5.9.3 MONITORING AND REPORTING REQUIREMENTS

All municipal providers, including providers regulated under the NPCCP, are required to annually report to ADWR:

1. Information on the total quantity of water withdrawn, diverted or received that enters the groundwater distribution system during the year.

2. Total quantity of water used within the service area and the total volume of water delivered for various municipal purposes.

3. Total number of housing units by unit type added to the service area from December 31 of the previous calendar year to December 31 of the reporting year.

4. All movements of water made by the provider during the year, including water accepted from another entity (received) that was subsequently sent (delivered) to be stored at a GSF or underground storage facility and stored water that was recovered during the year, whether annual or long-term credit recovery, regardless of the water type.

5. Volume of water ordered from an irrigation district that was released by the irrigation district from a storage or distribution facility but not accepted by the municipal provider or delivered to any other person.

FIFTH MANAGEMENT PLAN

PHOENIX ACTIVE MANAGEMENT AREA

2020-2025

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SUITE 310, PHOENIX, AZ 85007

CHAPTER 5: MUNICIPAL

5.1 INTRODUCTION

Municipal water providers are cities, towns, private water companies, and irrigation districts that deliver groundwater for non-irrigation uses (such as residential, commercial, governmental, industrial and construction uses). Municipal water providers also can include well co-operatives, mobile-home parks, or improvement districts. ADWR regulates those water providers serving more than 250 acre-feet (AF) of water for non-irrigation use annually as large municipal providers. Those providers serving 250 AF or less annually are regulated as small municipal providers. Some municipal water providers deliver water that is untreated for landscape/flood irrigation purposes only. ADWR regulates a municipal provider who delivers 100 AF or more of untreated water annually for landscape/flood irrigation as a large untreated provider. Municipal providers who deliver less than 100 AF of untreated water per year and only deliver water for landscape/flood irrigation are considered small untreated providers and are included in the small municipal water provider category. There are 43 large municipal providers and 52 small municipal providers in the Phoenix Active Management Area (PhxAMA). Two of the 43 large municipal providers are regulated as large untreated providers. A summary of municipal water supply and demand in the PhxAMA can be found in Chapter 2 and more detailed data can be found on the AMA Data webpage (https://new.azwater.gov/ama/ama-data). The online data will be updated annually.

The Municipal Conservation Programs for the PhxAMA have been updated for the Fifth Management Plan (5MP). The Total Gallons Per Capita per Day (GPCD) Program and the Non-Per Capita Conservation Program (NPCCP) have been substantially modified as compared to the Fourth Management Plan (4MP) and are designed to reduce withdrawals of groundwater. The Alternative Conservation Program (ACP) and the Institutional Provider Program (IPP) are not included in this plan. The programs for small providers and large untreated providers are unchanged from the 4MP. The conservation requirements contained in this chapter will become effective on January 1, 2025. Each program is described in this chapter, and the legal language pertaining to each program can be found in section 5.11.

5.9.2 DISTRIBUTION SYSTEM REQUIREMENTS

Lost and unaccounted for water is defined as the total water from any source, except direct use effluent, withdrawn, diverted or received in a year, minus the total amount of authorized deliveries made by the municipal provider in that year. Lost and unaccounted for water includes line leakage, meter under-registration, evaporation or leakage from storage ponds or tanks, system and hydrant leaks or breaks, and illegal connections.

All municipal providers are required to meet an efficient lost and unaccounted for water standard in their service areas. Lost and unaccounted for water will be determined for each municipal provider based on the total quantity of metered and unmetered water deliveries and the total water pumped, received, or diverted by the municipal provider for each calendar year, excluding direct use effluent. Small municipal providers must maintain lost and unaccounted for water at or below 15 percent. Large municipal providers are required to maintain their system not to exceed 10 percent lost and unaccounted for water. Large untreated water providers are required to either line all canals used to deliver untreated water to the provider's delivery points with a material that allows no more lost water than a well-maintained concrete lining or operate and maintain its distribution system to limit lost and unaccounted for water at or below 10 percent.

For the 5MP, ADWR will allow providers to exclude water from the lost and unaccounted for water calculation that is metered or estimated using approved estimating procedures and used pursuant to other regulatory requirements such as well purging and line flushing. Providers also may exclude estimated water uses such as construction (truck loads for dust control) or fire services, but all other uses of water within a distribution system must be metered. Appendix 5A provides a complete list of uses that are considered in the lost and unaccounted for water calculation and those uses which can be estimated to determine the volume.

5.9.3 MONITORING AND REPORTING REQUIREMENTS

All municipal providers, including providers regulated under the NPCCP, are required to annually report to ADWR:

1. Information on the total quantity of water withdrawn, diverted, or received that enters the groundwater distribution system during the year.

2. Total quantity of water used within the service area and the total volume of water delivered for various municipal purposes.

3. Total number of housing units by unit type added to the service area from December 31 of the previous calendar year to December 31 of the reporting year.

ATTACHMENT E

Gmail

Jennifer Marteniez <jkmarteniez@azwater.gov>

Re: Water

1 message

Jennifer Marteniez <jkmarteniez@azwater.gov> Thu, Oct 10, 2024 at 3:39 PM
To: Spencer Kamps <kampss@hbaca.org>

Spencer,

Not a problem. I will get the meeting scheduled. Please let me know if Rob can join us and I will add him to the invite.

Thanks!

On Thu, Oct 10, 2024 at 3:30 PM Spencer Kamps <kampss@hbaca.org> wrote:

> Jennifer,
>
> Thanks for getting back to me. The 21st works for me. I would like to bring Rob Anderson if that is acceptable. If so, I will need to check with his calendar but I would prefer to schedule this event since I know the Director is busy.
>
> Let me know if you have any concerns. Thanks again.
>
> HBACA
> Home Builders Association of Central Arizona
>
> **Spencer Kamps** | Vice President Legislative Affairs
>
> ***Home Builders Association of Central Arizona***
>
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> ---
>
> **From:** Jennifer Marteniez <jkmarteniez@azwater.gov>
> **Sent:** Thursday, October 10, 2024 11:20 AM
> **To:** Spencer Kamps <kampss@hbaca.org>
> **Subject:** RE: Water
>
> Mr. Kamps,
>
> Director Buschatzke and staff have the following dates and times available for a 1 hour meeting.

10/21 - Open from 3-4:30pm

11/6 - Open from 1-3pm

11/13 - Open from 8:30-10am

Please let me know if any of those dates and times work for you or if we need to look at additional dates. Also, please let me know if you will coming to our office or if you would like a virtual meeting.

Thanks,

Jennifer

---------- Forwarded message ---------
From: **Spencer Kamps** <kampss@hbaca.org>
Date: Tue, Oct 1, 2024 at 9:59 AM
Subject: Water
To: tbuschatzke@azwater.gov <tbuschatzke@azwater.gov>

Director Buschatzke,

I hope all is well with you. It seems like the negotiations on the River seem very challenging from what I have read in the media.

As the landscape for my members continues to face uncertainty regarding our ability to procure water supplies and grow, I thought it might be a good to sit down and discus this.

Are you available to meet with me and Rob Anderson?

Thanks.

HBACA
Home Builders Association of Central Arizona

Spencer Kamps | Vice President Legislative Affairs

Home Builders Association of Central Arizona

7310 N. 16th Street, Suite 305 Phoenix, AZ 85020

0 -602.274.6545 C-602 770-0063 | www.hbaca.org

Follow us:

--

Jennifer K. Marteniez

Executive Assistant

Arizona Department of Water Resources

1110 W. Washington Street, Suite 310, Phoenix, AZ 85007

602.771.8426

jkmarteniez@azwater.gov

PROTECTING ARIZONA'S WATER SUPPLIES *for* ITS NEXT CENTURY

--
Jennifer K. Marteniez
Executive Assistant
Arizona Department of Water Resources
1110 W. Washington Street, Suite 310, Phoenix, AZ 85007
602.771.8426
jkmarteniez@azwater.gov

PROTECTING ARIZONA'S WATER SUPPLIES *for* ITS NEXT CENTURY

Gmail

Jennifer Marteniez <jkmarteniez@azwater.gov>

Re: Meeting with Director Buschatzke

1 message

Jennifer Marteniez <jkmarteniez@azwater.gov> Fri, Oct 11, 2024 at 10:42 AM
To: Spencer Kamps <kampss@hbaca.org>

Sounds good. Thanks Spencer!

On Fri, Oct 11, 2024 at 10:26 AM Spencer Kamps <kampss@hbaca.org> wrote:

> Jennifer,
>
> Please disregard my request to have Rob Anderson attend the meeting on the 21st.
>
> I will be the only one attending.
>
> Thanks.
>
> HBACA
> Home Builders Association of Central Arizona
>
> **Spencer Kamps** | Vice President Legislative Affairs
>
> ***Home Builders Association of Central Arizona***
>
> 7310 N. 16th Street, Suite 305 Phoenix, AZ 85020
>
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>
> **Follow us:**

--

Jennifer K. Marteniez
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jkmarteniez@azwater.gov

PROTECTING ARIZONA'S WATER SUPPLIES for ITS NEXT CENTURY

ADWR/HBACA Meeting

Created by: Jennifer Marteniez · Your response: ✔Yes, I'm going

Time

3pm - 4pm (Mountain Standard Time - Phoenix)

Date

Mon Oct 21, 2024

Where

Arizona Department of Water Resources, 1110 W Washington St #310, Phoenix, AZ 85007, USA, PHX-1110WWash-3-WC_Salt River Conf. Room (25) [Speakerphone, VideoConferencing]

Rooms, etc.

- ✔ PHX-1110WWash-3-WC_Salt River Conf. Room (25) [Speakerphone, VideoConferencing]

Guests

- ✔ Emily Petrick
- ✔ Jennifer Marteniez
- ✔ Nicole Klobas
- ✔ Tom Buschatzke

Description

Director Buschatzke,

I hope all is well with you. It seems like the negotiations on the River seem very challenging from what I have read in the media.

As the landscape for my members continues to face uncertainty regarding our ability to procure water supplies and grow, I thought it might be a good to sit down and discus this.

Are you available to meet with me and Rob Anderson?

Thanks.

HBACA-2016

Spencer Kamps | Vice President Legislative Affairs

Home Builders Association of Central Arizona

7310 N. 16th Street, Suite 305 Phoenix, AZ 85020

0 -602.274.6545 C-602 770-0063 | www.hbaca.org

My Notes

Welcome to the Arizona Department of Water Resources

Date	Please PRINT your Name	Purpose of Visit	Time In	Time O
10/21/24	Joe O'Bacini	Brian Conway	11:47	
10/21/24	Carlos Favila	Permit drop-off	11:54	
10-21-24	ALONZO Trevino	permit drop off water	11:55	
10-21-24	DEBBIE FALLIS	WELL REGISTRATION	12:34	
10/21/24	Spencer Bamps	Director	3:00	
10/21/24	Riley Tuckey	NOI Application	3:00	
10/22/24	Mike Zambuto	NOI	8:29	
10/22-24	[illegible]	SL Lake	8:55	
10/22/24	[illegible]	NOI	11:00	
10/22/24	Daniel Vanfoteng	Applications	1:00	
10/23/24	FRED ZAMORA	AMA	9:42	
10/23/24	Robert Billingsley	AMA	9:54	
10/23/24	Nov Arthwal	AMA	9:58	
10/23/24	Ethan Orr	AMA	9:58	

E-1.

DEPARTMENT OF AGRICULTURE
Title 3, Chapter 5, Article 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: **September 10, 2024**

SUBJECT: **DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 5, Article 1

Summary

This Five Year Review Report (5YRR) from the Department of Agriculture (Department) covers ten (10) rules and one (1) table in Title 3, Chapter 5, Article 1 related to Sampling and Laboratory Certification. Specifically, R3-5-101 defines the terms used in the Article, R3-5-102 describes the procedures to apply for and renew a laboratory certification, R3-5-103 lists the services for which a person must obtain certification, R3-5-104 sets the fee for initial certification, renewal, and replacement of a lost certificate, R3-5-105 lists the requirements certified laboratories must maintain, R3-5-106 requires laboratories to use certified testing procedures, R3-5-107 requires applicants to participate in proficiency testing, R3-5-110 defines the process for use of a referee laboratory if the results from two certified labs are different or if an individual or state agency contests the results from a certified lab, R3-5-111 requires that a laboratory certification is dependent on the physical location where the service is performed, R3-5-112 establishes overall time-frames that a Department shall issue or deny a license, and Table 1 establishes overall time-frames that a Department shall issue or deny a license.

The Department did not complete its prior proposed course of action as the Department determined the prior amendment was no longer necessary.

Proposed Action

The Department does not have a proposed course of action at this time.

1. **Has the agency analyzed whether the rules are authorized by statute?**

The Department cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department indicates the economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared in 2004. The State bore minimal costs in developing the necessary guidance documents and educating the regulated community. The certified labs bore slight costs developing the necessary documentation changes. The Department anticipates no economic impacts by continuing these rules.

Stakeholders include the Department and entities certified by the Department to perform agricultural laboratory services.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department has determined that the benefits of Title 3, Chapter 5, Article 1, are deemed to be the minimum required for the safety of the agriculture industry while being supportive of commerce in Arizona without undue hardships, costs or barriers to business. The benefits of the rules outweigh the minimal cost of the rules and impose the least burden and cost to any regulated persons.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department has not received written criticism of the rules in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department states the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department states that there is no corresponding federal law related to these rules.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department states that all the rules were adopted prior to July 29, 2010, however if they had not been, that the rules would qualify for an exception under ARS § 41-1037 (A)(3), as the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.

11. **Conclusion**

This Five Year Review Report from the Department of Agriculture covers ten rules and one table in Title 3, Chapter 5, Article 1 related to Sampling and Laboratory Certification. As indicated above, the rules are clear, concise, and understandable; effective in meeting their objectives; and consistent with other rules and statutes. The Department does not intend on submitting a Notice of Final Rulemaking to the Council.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

KATIE HOBBS
Governor

PAUL E. BRIERLEY
CEO & EDD

Arizona Department of Agriculture

1110 W. Washington Street, Phoenix, AZ 85007
P: (602) 542-0945 F: (602) 542-0898

May 6, 2024

grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: Five-Year Rule Review Report for A.A.C. 4, Title 3, Chapter 5, Article 1

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report of the Arizona Department of Agriculture's ("Department") for A.A.C. Title 3, Chapter 5, Articles 1 which was due July 21, 2024. The Department reviewed all the rules in Article 1. The Department does not intend for any rules to expire under A.R.S. § 41-1056(J). The Department certifies it is in compliance with A.R.S. § 41-1091.

Please contact Doug Marsh at (602) 744-4924 or dmarsh@azsal.gov with any questions about this report.

Sincerely,

Paul E. Brierley
Executive Deputy Director

cc: Doug Marsh, Assistant Director

ARIZONA DEPARTMENT OF AGRICULTURE

FIVE-YEAR REVIEW REPORT

Title 3. Agriculture

Chapter 5. Department of Agriculture - State Agriculture Laboratory

Article 1. Sampling and Laboratory Certification

July 21, 2023
[Revised] November 19, 2024

1. Authorization of the rules by existing statutes:

Authorizing statutes:	General:	A.R.S. §§ 3-107(A) (l); 3-147
	Specific:	A.R.S. §§ 3-143(C); 3-145; 3-146; 3-147

2. The objective of each rule:

Rule	Objective
ARTICLE 1. GENERAL PROVISIONS	
R3-5-101	This rule sets out the definitions used for specific terms in this Article.
R3-5-102	This rule prescribes the procedures to apply for and renew certification to perform agricultural laboratory services, as well as the procedures for a certification holder to terminate the certification.
R3-5-103	This rule lists categories of agricultural laboratory services for which a person may obtain certification.
R3-5-104	This rule sets the fee for initial certification, renewal, and replacement of a lost certificate.
R3-5-105	This rule requires certified laboratories to maintain certain documentation for a specific period of time, maintain a quality assurance manual, maintain accurate calibration of testing equipment, follow OSHA standards, and dispose of hazardous waste as provided by law.
R3-5-106	This rule requires that certified laboratories use standardized testing procedures either developed by or approved by the Department.
R3-5-107	This rule requires all applicants for certification to participate in a proficiency testing program to demonstrate the ability to provide credible test results for a specific agricultural service and to submit a corrective action plan to correct deficiencies.

R3-5-110	This rule defines the process for use of a referee laboratory if the results from two certified labs are different or if an individual or state agency contests the results from a certified lab that is contracted to provide a service.
R3-5-111	This rule defines that a laboratory certification is dependent on the physical location where the service is performed. If a certified facility moves, a new certification is required.
R3-5-112	This rule, along with Table 1, establishes overall time-frames within which the Department shall issue or deny a license under this article.
Table 1	See above entry.

3. Are the rules effective in achieving their objectives? Yes X No ____

The rules in the Article are effective in achieving their objective.

4. Are the rules consistent with other rules and statutes? Yes X No ____

The rules in the Article are consistent with other rules and statutes.

5. Are the rules enforced as written? Yes X No ____

The rules in the Article are enforced as written.

6. Are the rules clear, concise, and understandable? Yes X No ____

The rules in the Article are clear, concise, and understandable.

7. Has the agency received written criticisms of the rules within the last five years? Yes ____ No X

The agency has not received any written criticisms of the rules within the last five years.

8. Economic, small business, and consumer impact comparison:

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared in 2004. The State bore minimal costs in developing the necessary guidance documents and educating the regulated community. The certified labs bore slight costs developing the necessary documentation changes. The Department anticipates no economic impacts by continuing these rules.

Summary EIS from 2004 Rulemaking:

A. The Arizona Department of Agriculture

The Department will incur modest expenses related to training staff and educating the regulated community on the amendments. The Department will benefit from the corrected time-frame for certification of a service not previously certified by the SAL. The time-frame table now matches the content of the time-frame rule.

There has been no modification to these rules since 2004. The Department has been operating the laboratory certification program under these rules for the past 20 years. This is no current impact to the Department for continuing these rules.

B. Political Subdivisions

Other than the Department, no other political subdivision is impacted by the rulemaking.

C. State Revenue

This rulemaking will have no impact on state revenue.

D. Businesses Directly Affected By the Rulemaking

There has been no modification to these rules since 2004. All the labs currently certified under these rules have been so certified for several years. This is no expected impact to the certified community.

Certified laboratories and those seeking initial certification will benefit from the clarity of the amended rules and the added definitions. Laboratories will have the option to seek certification in two new categories, noxious weed identification and noxious weed seed identification. The required content of the Master File and of the Quality Assurance Manual is revised and is more comprehensive than was previously required. Duplicative content is removed. The recordkeeping provisions are more directly stated than in the past to assist the laboratories to meet their obligations. There are no fee increases associated with this rule package. The Department currently certifies five laboratories, each of which provides one agricultural laboratory service. The Department believes the certified laboratory community will bear only minor costs connected to the implementation of this rulemaking. Any costs will be limited to organizing and modifying documentation. The Department believes the benefit to the state to regulate laboratories performing the above-described certified laboratory services outweighs any related cost to the certified laboratory community.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___No X__

The agency has not received any business competitive analysis of the rules.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

There was no course of action indicated in the previous five-year-review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to the regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Division has determined that the benefits of Title 3, Chapter 5, Article 1, are deemed to be the minimum required for the safety of the agriculture and related laboratory industries while being supportive of commerce in Arizona without undue hardships, costs or barriers to business. The benefits of the rules outweigh the minimal cost of the rules and impose the least burden and cost to any regulated persons. Without the rules in

Article 1, there would be no available option to certify agricultural laboratories for the testing of agricultural products for health, safety and compliance purposes as required by statute and there is no comparative alternative available for these services. The fees prescribed in rule for new and renewal certification only partially cover the costs associated to administer an agricultural laboratory certification program as mandated in statute.

The prescribed fees are also minimal compared to similar laboratory certification programs in other Arizona agency's and other state's. The Department charges $200 for a new certification and $100 for a renewal. These fees have not changed since being established in 1985. The Department offers the following examples of charges for similar laboratory certification services in this State and other Western states for comparison purposes. The Department currently certifies a laboratory for testing cannabis for levels of THC, charging the aforementioned fees. The Arizona Department of Health Services charges $25,000 for initial and $5,000 for renewal certifications of laboratories testing cannabis and cannabis products. Further, the Arizona Department of Health Services charges between $1,677 and $2,348 for environmental laboratory certification similar to what our Department provides (R9-14-607). Other states, like Oregon charge laboratories (located in Oregon), one of three levels of certification fees, $450, $900 and $1,600; Plus, additional fees for areas of accreditation. California's "Animal Health Lab" certification is $1,000/year and Colorado has an annual fee of $350 per specialty. Other compliance costs and paperwork is kept to a minimum so that requirements are not overly burdensome.

12. Are the rules more stringent than corresponding federal laws? Yes ___No__X

None of the rules in Title 3, Chapter 5, Article 1, are more stringent than corresponding federal laws.

13. For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

These rules were adopted prior to July 29, 2010. In addition, a general permit for laboratory certification would not suffice to ensure that the public is protected. One general certification cannot authorize multiple processes. For example, testing for aflatoxin in cottonseed is one service requiring specific certification and expertise. Testing for aflatoxin in raw milk is a separate service that requires a separate certification and different expertise. The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.

14. Proposed course of action:

The Division does not propose any further action at this time.

TITLE 3. AGRICULTURE

CHAPTER 5. DEPARTMENT OF AGRICULTURE STATE AGRICULTURAL LABORATORY

Authority: A.R.S. § 3-141 et seq.

Former Title 3, Chapter 5, Article 1, Sections R3-5-01 through R3-5-08, renumbered to Title 3, Chapter 2, Article 8, Sections R3-2-801 through R3-2-808; new Title 3, Chapter 5, Article 1, Sections R3-5-101 through R3-5-110 renumbered from Title 3, Chapter 1, Article 7, Sections R3-1-701 through R3-1-710 (Supp. 91-4).

ARTICLE 1. SAMPLING AND LABORATORY CERTIFICATION

Article 1, consisting of Sections R3-5-101 through R3-5-110 renumbered from R3-1-701 through R3-1-710 (Supp. 91-4).

Title 3, Chapter 1, Article 7 consisting of Sections R3-1-201 through R3-1-210 renumbered without change as Article 7, Sections R3-1-701 through R3-1-710 (Supp. 89-1).

Title 3, Chapter 1, Article 7 consisting of Sections R3-1-201 through R3-1-210 adopted effective July 25, 1985.

Section

R3-5-101. Definitions
R3-5-102. Certification; Renewal; Termination
R3-5-103. Agricultural Laboratory Services
R3-5-104. Fees
R3-5-105. Laboratory Requirements
R3-5-106. Testing Procedures
R3-5-107. Proficiency Testing Program
R3-5-108. Repealed
R3-5-109. Repealed
R3-5-110. Referee Laboratory
R3-5-111. Certification Expiration; Laboratory Relocation
R3-5-112. Licensing Time-frames
Table 1. Time-frames (Calendar Days)

ARTICLE 1. SAMPLING AND LABORATORY CERTIFICATION

R3-5-101. Definitions

In addition to the definitions in A.R.S. §§ 3-101 and 3-141, the following terms apply to this Chapter:

"Accuracy" means the closeness of an observation to the true value.

"Embossing Seal" means a seal approved by the SAL.

"Person" means an individual, partnership, corporation, or other legal entity that establishes, conducts, or maintains a laboratory as prescribed in A.R.S. § 3-145(A).

"Precision" means the agreement of repeated observations made under the same conditions.

"Proficiency Testing Program" or "PTP" means a check sample testing program.

"Quality assurance" means an integrated system of management activities involving planning, implementation, assessment, reporting, and quality improvement to ensure that a process, item, or service is of definable quality.

"SAL" means Arizona Department of Agriculture State Agricultural Laboratory.

"Testing" means a process employed to achieve a result for an agricultural service performed by a certified laboratory.

Historical Note

Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-201 renumbered without change as Section R3-5-101 (Supp. 89-1). Section R3-5-101 renumbered from R3-1-701 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

R3-5-102. Certification; Renewal; Termination

A. Initial laboratory certification. A person who is seeking initial laboratory certification to provide an agricultural laboratory service, as prescribed in A.R.S. § 3-145, shall:
1. Provide the following information on an application form obtained from the Department:
   a. Name, business and mailing address, telephone and fax numbers, and e-mail address of the laboratory;
   b. Name, address, telephone number, e-mail address, and signature of the owner; and
   c. Name, address, telephone number, e-mail address, and signature of the laboratory manager;
2. Provide a description of all programs, services, and functions performed at the laboratory;
3. On the application form, list the service that the certified laboratory will perform by commodity or sample-type, detailing the test procedure used, including specific references to any publication where the test procedure is described;
4. Provide a current employee organization chart that includes employee name, title, and laboratory responsibility; and
5. Include the fee prescribed in R3-5-104 with the application.

B. A person shall provide written notification to the Assistant Director of any change to the information provided under subsection (A)(1) within 30 days after the change.

C. New service. If a person is seeking laboratory certification for a service not currently performed by the SAL, the application will be considered as a new service laboratory certification. If the necessary expertise for review does not exist within the SAL, the Director shall establish a committee as prescribed in A.R.S. § 3-106 to advise the Department of the proper procedures for laboratory certification in that area.

D. Certification renewal.
1. A person shall file a renewal application obtained from the Department at least 30 days before the expiration date of the current certification and provide the information required in subsection (A)(1).
2. An application received less than 30 days before the expiration date is untimely and the person shall reapply for an initial laboratory certification.
3. If an application is received more than 60 days before the expiration date of the current certification, the Department shall return the application to the person for resubmission.
4. The current certification remains valid until a determination is made on the renewal application.
5. A person shall pay the fee prescribed in R3-5-104 with the renewal application.

E. Certification termination. A person may terminate a laboratory certification by notifying the Assistant Director in writing within 30 days before the effective date of the termination.

Historical Note

Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-202 renumbered without change as Section R3-5-102 (Supp. 89-1). Section R3-5-102 renumbered from R3-1-702 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

R3-5-103. Agricultural Laboratory Services

A. A person may apply for a laboratory certification to perform any of the services listed in A.R.S. § 3-141(1) or any of the following agricultural laboratory services:
1. Determination of specific element and ion content of water for irrigation or livestock purposes;
2. Determination of specific element and ion content of plant tissue for the evaluation of plant nutrients;
3. Determination of specific element and ion content of soil for the evaluation of soil fertility and for element and ion content that may cause plant growth limitations;
4. Determination of the content of processed meat or a meat food product including the percentage of a meat or non-meat ingredient;
5. Verification of an analysis for the accuracy of the label guarantee of a feed, fertilizer, animal manure, plant growth stimulant, soil amendment, soil conditioner, or pesticide;
6. Verification of planting seed germination percentages, purity analysis, or another named seed or plant propagative material testing procedure;
7. Identification of insects, plant pathogens, animal pathogens, nematodes, noxious weeds, noxious weed seeds, or animal parasites;
8. Testing of milk or milk product for quality and market standards;
9. Determination of mycotoxin, antibiotic, or drug residue in plant or animal tissue;
10. Determination of mycotoxin, antibiotic, or drug residue in a plant or animal product, animal feed, or feed ingredient;
11. Determination of a specific pesticide, or hazardous or toxic element in plant or animal tissue;
12. Determination of a specific pesticide or hazardous or toxic element in water used in livestock production, irrigation water, air, soil, agricultural product, or animal feed; or
13. Collection of samples.

B. A person may seek laboratory certification for an agricultural laboratory service not listed in subsection (A) by complying with R3-5-102(A).

Historical Note

Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-203 renumbered without change as Section R3-5-103 (Supp. 89-1). Section R3-5-103 renumbered from R3-1-703 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

R3-5-104. Fees

A. A person shall pay the following fee to the Department before the SAL will review the application for laboratory certification to perform an agricultural laboratory service:
1. Initial fee, $200 per certification; or
2. Renewal fee, $100 per certification.

B. Except as provided in A.R.S. § 41-1077, the applicable fee is nonrefundable.

Historical Note

Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-204 renumbered without change as Section R3-5-104 (Supp. 89-1). Section R3-5-104 renumbered from R3-1-704 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

R3-5-105. Laboratory Requirements

A. A person who has obtained laboratory certification under this Article shall maintain a master file for each certification. The person shall update the master file within 30 days of any change. The master file shall contain:
1. The most current letter of certification, stating the period of validity;
2. A quality assurance manual as described in subsection (B);
3. An organizational chart that indicates:
   a. Each personnel position with responsibility for the agricultural laboratory service; and
   b. The reporting relationship of each position identified in subsection (A)(3)(a), including every administrative, operational, and quality control relationship;
4. The name and resume of the individual assigned to each position identified in subsection (A)(3)(a);
5. Documentation of training for each staff member who performs all or part of the agricultural laboratory service;
6. Documentation of the laboratory's competence and experience in the applicable test procedure for the agricultural laboratory service;
7. Reports of each sample result for the last three years and all data generated during the testing. After three years, these records shall be maintained as prescribed in subsection (D). With the approval of the Assistant Director, a person may maintain records in electronic format;
8. Laboratory equipment lists, including:
   a. Type and manufacturer;
   b. Serial and model number;
   c. Date of the last calibration, if applicable; and
   d. Maintenance records;
9. Receiving and shipping records of all samples and supplies relating to the certification;
10. Quality control documentation;
11. Documentation of reference material, standards, and biological specimens as prescribed in subsection (B)(5); and
12. All correspondence relating to the certification and operation of the program.

B. A person who has obtained laboratory certification shall maintain a quality assurance manual. The person shall update the manual within 30 days of any change, except that any change to a testing procedure requires pre-approval from the Assistant Director based on a request made at least 30 days before the proposed implementation date. The manual shall contain:
1. A description of laboratory management and the responsibilities of personnel related to the certification that includes:
   a. The legal name, address, and telephone number of the main office or parent company;
   b. The name, location of the laboratory, and telephone number, if different from subsection (B)(1)(a);
   c. The education, skill, and experience required of an individual in a position included in the organizational chart prescribed in subsection (A)(3); and
   d. A description of the method used to train each person in a position included in the organizational chart prescribed in subsection (A)(3);

2. Procedures for receiving and handling samples, including:
   a. Transporting samples to the laboratory in a manner that protects the integrity of the sample;
   b. Performing a visual examination upon receipt for evidence of shipping damage;
   c. Recording date and time of sample receipt, carrier name, and method of shipment;
   d. Recording sample weight, temperature, or other physical parameters, as applicable;
   e. Completing chain of custody documentation for receipt, as applicable;
   f. Identifying a sample with a unique identification number;
   g. Storing a sample before and after testing; and
   h. Disposing of samples after completion of testing, including holding time;
3. Procedures for purchasing, receiving and storing reagents and laboratory consumable materials that affect the quality of tests;
4. A written standard operating procedure for each test as prescribed in R3-5-106. A standard operating procedure for a test shall contain, as applicable:
   a. An identification of the standard operating procedure, including the title, revision number, effective date, and authorizing signature;
   b. The purpose of the procedure, including a description of the expected outcome;
   c. The scope of the procedure, including a description of the type of samples and test parameters for which the procedure is applicable;
   d. A list of reagents, apparatus, and equipment used, including technical performance requirements;
   e. A list of necessary reference standards or reference materials;
   f. A description of acceptable environmental conditions;
   g. A sequential listing, in detail, of the steps and operations of the procedure;
   h. An identification of any hazardous situation or operation;
   i. A list of safety measures specific to the test procedure;
   j. A list of precautions designed to prevent damage or contamination to a sample or testing equipment;
   k. Any quality control measures that will be used to determine acceptability of a test result, including acceptance criteria;
   l. A list of data to be recorded and the method for reporting the test result; and
   m. The procedure's uncertainty or the method to be used for reporting uncertainty;
5. Procedures for documenting applicable reference material, standards, and biological specimens that provide:
   a. Traceability of each chemical standard of measurement to a primary standard;
   b. Verified and traceable biological specimens; and
   c. Origin and traceability of reference material;
6. A description of an equipment maintenance program that includes:
   a. Each manufacturer's recommendations for the setup and normal operation of each piece of equipment;
   b. A separate maintenance schedule for each piece of equipment, and a procedure for recording the date maintenance is performed and the date of any damage, malfunction, modification, or repair of the equipment; and
   c. Quality control procedures for determining equipment performance; and
7. Procedures for quality control activity, including:
   a. Monitoring temperature-controlled spaces;
   b. Certifying that each thermometer, analytical balance, and biological hood meets federal or nationally-recognized standards, as applicable;
   c. Calibrating glassware and volumetric equipment, as applicable; and
   d. Validating the quality of reagents and laboratory consumable material, as applicable.

C. A person who has obtained laboratory certification shall ensure the accurate calibration of testing equipment.

D. A person who has obtained laboratory certification shall maintain records required under this Article for five years, except pesticide residue sample results and data, which shall be maintained for seven years;

E. A person who has obtained laboratory certification shall maintain a facility and conduct operations in compliance with the standards established by the Occupational Safety and Health Administration and any other applicable federal, state, or local building, sanitary, safety, electrical, and fire code for the area in which the laboratory is located.

F. A person who has obtained laboratory certification shall dispose of hazardous waste cataloged in the Identification and Listing of Hazardous Waste, 40 CFR 261, July 1, 2003 edition, as prescribed in the Standards Applicable to Generators of Hazardous Waste, 40 CFR 262, July 1, 2003 edition. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department.

Historical Note

Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-205 renumbered without change as Section R3-5-105 (Supp. 89-1). Section R3-5-105 renumbered from R3-1-705 (Supp. 91-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

R3-5-106. Testing Procedures

A person complying with this Article shall:

1. Use testing procedures that are referenced in professional journals or manuals and obtain the Assistant Director's approval of the procedures, or
2. Use testing procedures established by the SAL.

Historical Note

Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-206 renumbered without change as Section R3-5-106 (Supp. 89-1). Section R3-5-106 renumbered from R3-1-706 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

R3-5-107. Proficiency Testing Program

A. A person applying for laboratory certification shall participate in a PTP to demonstrate the ability of the laboratory to provide the agricultural laboratory service.

B. A person participating in an outside PTP shall provide the Assistant Director with its identification number and a copy of the results. The person shall pay the cost of the PTP.

C. The Department shall evaluate each laboratory based on comparative results obtained for each PTP sample. If the Department discovers a deficiency, the person applying for laboratory certification shall submit a corrective action plan to the Assistant Director.

Historical Note
Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-207 renumbered without change as Section R3-5-107 (Supp. 89-1). Section R3-5-107 renumbered from R3-1-707 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

R3-5-108. Repealed

Historical Note
Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-208 renumbered without change as Section R3-5-108 (Supp. 89-1). Section R3-5-108 renumbered from R3-1-708 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1).

R3-5-109. Repealed

Historical Note
Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-209 renumbered without change as Section R3-5-109 (Supp. 89-1). Section R3-5-109 renumbered from R3-1-709 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1).

R3-5-110. Referee Laboratory
If the testing results from two certified laboratories differ or certified laboratory results are challenged by a person or state agency that is contracting for agricultural laboratory services, the Director may designate a laboratory to serve as a referee and assist in making a final determination. If the test results are challenged, the party who loses the dispute shall pay all costs incurred by the referee laboratory.

Historical Note
Adopted effective July 25, 1985 (Supp. 85-4). Former Section R3-1-210 renumbered without change as Section R3-5-110 (Supp. 89-1). Section R3-5-110 renumbered from R3-1-710 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

R3-5-111. Certification Expiration; Laboratory Relocation
A laboratory certification is valid for the physical location approved by the SAL in response to the initial or renewal application. If a laboratory relocates after initial certification or renewal of certification, the existing 12-month certification expires on the date of the move. A person seeking laboratory certification for the new location shall file an initial certification application to become certified at the new physical location and the Department shall perform an on-site review.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

R3-5-112. Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a laboratory certification within the overall time-frames listed in Table 1 after receipt of an application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.

B. Administrative completeness review.
1. The applicable administrative completeness review time-frame established in Table 1 begins on the date the Department receives an application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application is incomplete. The notice shall specify the information that is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the application is complete.
2. An applicant with an incomplete certification application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date that the Department mails the notice of missing information to the applicant until the date that the Department receives the information.
3. If the applicant fails to submit the missing information before expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain laboratory certification by submitting a new application.
4. If an applicant requests laboratory certification of a new service, the Department shall add 90 days to the administrative completeness review time-frame to provide time for establishing a protocol for granting certification.

C. Substantive review. The substantive review time-frame established in Table 1 begins on the date that the application is administratively complete.
1. On-site survey.
   a. Within 30 days after receipt of a complete application, the SAL shall schedule an on-site survey of an applicant's laboratory facilities.
   b. The Assistant Director may waive the on-site survey for a renewal applicant if the renewal applicant is in compliance with the other provisions of this Article.
2. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date that the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request within the additional information period, the Department shall deny the certification.
3. If laboratory certification is denied, the Department shall send the applicant written notice explaining:
   a. The reason for the denial with citations to supporting statutes or rules;
   b. The applicant's right to appeal the denial;
   c. The period for appealing the denial; and
   d. The name and telephone number of a Department contact person who can answer questions regarding the appeals process.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

Table 1. Time-frames (Calendar Days)

Certification	Authority	Administrative Completeness Review	Completion Request Period	Substantive Completeness Review	Additional Information Period	Overall Time-frame
Laboratory Certification	A.R.S. § 3-145					
• Initial	R3-5-102	14	30	60	90	74
• Renewal		14	14	30	14	44
New service		104	90	60	30	164

Historical Note

Table 1 adopted by final rulemaking at 5 A.A.R. 573, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 3959, effective November 13, 2004 (Supp. 04-3).

3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.

2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.

3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.

5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.

6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.

7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.

8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.

9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.

10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.

11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.

12. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The director may:

1. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint

agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.

3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.

4. Cooperate with the office of tourism in distributing Arizona tourist information.

5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.

6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.

7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.

8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

3-147. Rules; advisory committee

A. The director shall adopt reasonable rules for certification of laboratories that perform agricultural laboratory testing. Rules shall be prescribed only insofar as they affect the precision and accuracy of laboratory results. The rules shall include:

1. Acceptable methods of sampling, analyzing and testing including the routine examination of certified laboratories for accuracy of analysis.

2. Acceptable standards of sanitary and safety conditions within the laboratory and its surroundings.

3. Equipment essential to the proper operation of a laboratory.

4. The construction and operation of the laboratory, including plumbing, heating, lighting, ventilation, electrical services and similar conditions.

B. If before adopting rules pursuant to this section the director determines that it is necessary or desirable, the director may appoint an advisory committee pursuant to section 3-106.

3-143. Assistant director; powers and duties

A. The assistant director for the state agricultural laboratory is responsible for the administration, operation and control of the state agricultural laboratory.

B. The assistant director shall have all the following qualifications:

1. A master's degree in chemistry or its equivalent in practical experience as determined by the director.

2. Experience in agricultural laboratory testing or experience in a control laboratory of an agency that regulates feeds, fertilizers or pesticides.

3. Supervisory experience.

C. The assistant director shall enforce rules established pursuant to section 3-147:

1. For the voluntary certification of laboratories providing agricultural laboratory services to persons of this state.

2. For the mandatory certification of laboratories providing agricultural laboratory services to agencies and departments of this state or its political subdivisions, including those laboratories that are a part of a state agency or department or a political subdivision of this state.

3. Prescribing testing, documentation and quality assurance procedures and requirements.

D. The assistant director may contract with and assist other divisions and offices in the department and other departments and agencies of the state, local and federal governments in the furtherance of the purposes of this article, including contracting to provide laboratory services.

3-145. Mandatory and voluntary certification; sampling procedures; application; expiration; renewal

A. A person who establishes, conducts or maintains a laboratory that provides agricultural laboratory services to agencies or departments of this state or its political subdivisions shall apply for a certificate from the state agricultural laboratory as proof that the laboratory so certified is in compliance with rules adopted by the director for the certification of such laboratories. Any other person providing agricultural laboratory services may apply for such a certificate.

B. A person providing guaranteed laboratory analysis information to distributors of commercial feed and whole seeds for consumption by livestock shall be certified under this section.

C. An individual who collects samples for the state agricultural laboratory or for any certified agricultural laboratory shall follow the sampling procedures established by the director.

D. A certified laboratory shall report test results only to the party who provided the original sample and, on request, to the state agricultural laboratory or as required by section 3-2611.01.

E. A person who desires a certificate pursuant to this section shall file with the state agricultural laboratory an application for a certificate accompanied by the application fee.

F. The application shall be on a form prescribed by the assistant director and furnished by the state agricultural laboratory and shall contain:

1. The name and location of the laboratory.

2. The name of the person owning the laboratory and the name of the person supervising the laboratory.

3. A description of the programs, services and functions provided by the laboratory.

4. Such other information as the assistant director deems necessary to carry out the purposes of this section.

G. The assistant director shall issue a certificate to an applicant if the assistant director is satisfied that the applicant has complied with the rules prescribing standards for certified laboratories.

H. A certificate expires one year after the date of issuance and shall be renewed upon payment of the renewal application fee as prescribed in section 3-146 and continued compliance with this article and the applicable rules.

3-146. Certificate fees

The director may establish by rule and the assistant director shall collect in advance the following nonrefundable fees:

1. For an initial laboratory certificate, not more than nine hundred dollars.

2. For a renewal of a laboratory certificate, not more than nine hundred dollars.

3. For a duplicate of a certificate, two dollars.

E-2.

ARIZONA DEPARTMENT OF ADMINISTRATION
Title 2 Chapter 15 Article 3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: **November 19, 2024**

SUBJECT: **Arizona Department of Administration**
Title 2, Chapter 15, Article 3

Summary

This Five-Year Review Report (5YRR) from the Arizona Department of Administration (Department) covers nine (9) rules in Title 2, Chapter 15, Article 3 related to policies and procedures for the State Surplus Administrator to act on behalf of the state in disposing of excess and surplus materials.

The Department indicated in the previous 5YRR approved by the Council in November 2019 that no course of action was necessary for the rules. However, the Department did state they may undertake an action to strike the moot language contained in R2-15-303B to eliminate the repealed exemption by January 30, 2020. This action did not take place and the Department will include these changes in the proposed course of action in this review.

Proposed Action

The Department intends to take the following course of action by amending the following rules:

- **R2-15-303(B)** - Amend to strike the moot language to eliminate the repealed exemption (A.R.S. § 27-105(6)).
- **R2-15-303(E)** - Amend to include electronic payments

- **R2-15-307(A)(2)** - Amend to include other federal income tax exempt non-profit entities that may not qualify under federal eligibility. (Currently limited to health and educational organizations. Expand to include animal welfare organizations).
- **R2-15-310.(C)(2)** - Amend to increase the $50.00 threshold on item sale proceeds amount to $100 in sales proceeds or nothing is reimbursed.

The Department will submit the proposed rule making by December 31, 2025.

1. **Has the agency analyzed whether the rules are authorized by statute?**

The Department cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Arizona Department of Administration adopted rules to provide policies and procedures for the State Surplus Administrator to act on behalf of the state in all matters pertaining to the disposition of excess and surplus materials. The rules were originally adopted as an emergency in January 1985 and were permanently adopted a few months later in April 1985. The rules were later amended by final rulemaking in September 2004. The information provided with the previous five-year-review report approved in November 2019 indicated that the economic impact of the rules had not differed and that there has been no impact on small business or consumers in the state. The effects on state agencies have not changed and remain unchanged from the previous EIS report submitted with the 2009 amendment of the rules.

Stakeholders include the Department, state government units, the State Surplus Property Administrator, the State Treasury, and the public who wish to purchase surplus inventory.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department believes that the rules impose the least burden and costs to individuals, public and private entities regulated by these rules. The Department has made every effort to ensure the procedures outlined for individuals regulated by the rules are efficient, cost effective and necessary to achieving the regulatory objectives.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department has not received written criticism of the rules in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department states the rules are clear, concise, and understandable. However, the Department identifies that R2-15-303B, with respect to the citation regarding the Mines and Minerals Museum (ARS 27-105(6)), has been rendered moot by statute. The specific statute granting the exemption has been repealed. The Department may undertake a rule revision to remove this exemption however since there is no longer a Department of Mines and Minerals, the rule change would strictly be a technical correction to strike the language.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department states that the federal government is not involved in the disposal of state property, as disposal of state property is governed by state law. The Federal Surplus Property Program is authorized under ARS 41-2603. The Program complies with federal regulations and there are no corresponding State rules governing the Federal Surplus Property Donation program. There is no similar requirement in federal law as the federal government does not get involved with the disposal of state property.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Under ARS § 41-1001 "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates that the rules are not applicable to the requirements imposed by A.R.S. § 41-1037 as the rules were adopted prior to July 29, 2010.

11. **Conclusion**

This Five-Year Review Report (5YRR) from the Department covers nine (9) rules in Title 2, Chapter 15, Article 3 related to policies and procedures for the State Surplus Administrator to act on behalf of the state in disposing of excess and surplus materials.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

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Katie Hobbs
Governor

Elizabeth Alvarado-Thorson
Cabinet Executive Officer
Executive Deputy Director

ARIZONA DEPARTMENT OF ADMINISTRATION

GENERAL SERVICES DIVISION
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August 19, 2024

Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

To the Council:

In response to the request from the GRRC under A.R.S. § 41-1056(A) for the Arizona Department of Administration to prepare a five year review report, the Department has reviewed its rules contained in Title 2, Chapter 15, Article 3 of the Arizona Administrative Code, consisting of R2-15-301 and R2-15-303 through R2-15-310 to determine whether any of its rules should be amended or repealed. This five year report is meant to summarize the Department's findings and propose a course of action if applicable.

If you have any questions regarding this five year review report or you need additional information prior to the Council meeting at which the Department's report will be considered, please contact Jobalena Yates, Business Manager, at (602) 721-9640.

Sincerely,

Nola Barnes, ADOA, GSD, Assistant Director

encl: 5 Year Review Report 2024

cc: Ray DiCiccio, ADOA, Deputy Director
Jessica Klein, ADOA, General Counsel
Kimberly Fiumara, ADOA, ADOA, GSD, Deputy Assistant Director

Five Year Review Report
Title 2, Chapter 15, Article 3
Materials Management
Management Services Division

Introduction

The Arizona Department of Administration (ADOA) adopted rules as authorized by statute to provide policies and procedures for the State Surplus Administrator to act on behalf of the state in all matters pertaining to the disposition of excess and surplus materials. The rules were originally adopted as an emergency, effective January 1, 1985. The rules were permanently adopted, effective April 3, 1985. The rules were later amended by final rulemaking, effective September 24, 2004. The rules include Chapter 15 consisting of Article 3, R2-15-301 and R2-15-303 through R2-15-310 inclusive.

ADOA conducted a five-year-review of these rules that was approved by the Governor's Regulatory Review Council (GRRC) in November, 2019. The five-year-review report approved by GRRC confirmed that Article 3 was clear, concise, effective, and conformed to authorizing statute. In addition, the ADOA or GRRC noted that no course of action was needed for the rules.

Except as otherwise noted, the information is identical, consistent, and effective for all of the rules in the Article.

1. General and specific statutes authorizing the rules:

A.R.S. §§ 41-703(3), 41-2511(A) – Provides specific authority for the rules.

2. Objective of the rules including the purpose for the existence of the rules:

ADOA believes the rules are effective in achieving their objectives.

Article 3 Materials Management
R2-15-301 and R2-15-303 through R2-15-310
Article 3 rules establish ADOA's policies and procedures for the Surplus Property Administrator to act on behalf of the state in all matters pertaining to the disposition of its excess and surplus materials.

The objective of R2-15-301 is to help state employees and the public understand the terminology that is used throughout this Article. The reason the rule is necessary is to ensure state employees and the public understand the words used in the rest of the rule.

The objective of R2-15-303 is to outline the responsibilities, the disposal methods, and how to trade-in surplus or excess material for state government units. In addition, the objective of this rule explains the sealed bidding process and online sales advertising for surplus and excess material. The reason this rule is necessary is because there should be clear guidance as to the disposition methods allowed and because ARS 41-2602 directs the Department to enact rules covering this topic.

The objective of R2-15-304 is to have each state government unit conduct an inventory and outline how to do an annual inventory report. The reason this rule is necessary is because conducting an annual inventory is part of good governance and because ARS 41-2602 directs the Department to enact rules covering this topic.

The objective of R2-15-305 shows state government units how to remove capital inventory material that has been lost, stolen or destroyed. The reason this rule is necessary is because good governance would suggest there be a mechanism and process in place to remove items from inventory which have been lost, stolen or missing and because ARS 41-2602 directs the Department to enact rules covering this topic.

The objective of R2-15-306 is to direct the State Surplus Property Administrator to file a state plan of operations with the General Services Administration, provides authority for the State Surplus Property Administrator to act on behalf of the state regarding federal surplus material and requires the State Surplus Property Administrator to distribute federal surplus material to eligible entities. The reason for this rule is good governance would suggest that the methods by which the State acquires or disposes of excess and surplus materials should be formalized and available to the agencies or the public and because ARS 41-2602 directs the Department to enact rules covering this topic.

The objective of R2-15-307 is to explain the eligibility for the acquisition of federal or state surplus material for state agencies and disallows state government units from obtaining excess or surplus materials without the approval of the State Surplus Property Administrator. The reason for this rule is because good governance would suggest there should be guidance regarding eligibility for the surplus program and a control element in place to track the acquisition of property from the Federal Government and because ARS 41-2604 directs the Department to enact rules covering this topic.

The objective of R2-15-308 is to allow the State Surplus Property Administrator to assess fees and charges to state government units for the transfer or sale of surplus state material. The reason for this rule is to clearly outline the mechanism by which the program is funded and because ARS 41-2607 directs the Department to enact rules covering this topic.

The objective of R2-15-309 is to outline the circumstances where the State Surplus Property Administrator may authorize the State Treasury to place monies into a government-insured depository institution. This reason for this rule is to provide guidance as to where monies received by the program are deposited.

R2-15-310 prescribes the authority to reimburse agencies on the sale or disposal of state surplus or excess materials and provides thresholds for that reimbursement to state government units. The reason for this rule is to provide guidance to the program on how and to whom proceeds are reimbursed and because ARS 41-2607 directs the Department to enact rules covering this topic.

3. Effectiveness of the rules in achieving the objective, including a summary of any available data supporting the conclusion reached:

All of the rules effectively achieve their objectives.

4. Consistency of the rules with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency:

The Department's analysis of these rules shows that the rules do not exceed the authority provided by statute. The rules are consistent with A.R.S. §§ 41-703(3) and 41-2511.

5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement:

The Department enforces 2 A.A.C. 15, Article 3.

6. Clarity, conciseness, and understandability of the rules:

All of the rules are generally clear, concise, and understandable. However, R2-15-303B with respect to the citation regarding the Mines and Minerals Museum (ARS 27-105(6)) has been rendered moot by statute. The specific statute granting the exemption has been repealed. The Department may undertake a rule revision to remove this exemption however since there is no longer a Department of Mines and Minerals, the rule change would strictly be a technical correction to strike the language.

7. Summary of the written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, written analysis submitted to agency questioning whether the rules are based on valid scientific

or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rules are discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings:

The Department has not received written criticisms regarding any of the rules during the last five years.

8. A comparison of the current economic, small business, and consumer impact of the rules with economic, small business, and consumer impact statement prepared on the last rulemaking of the rule or, if no economic, small business, and consumer impact statement was prepared on the last rulemaking of the rule, an assessment of the actual economic, small business, and consumer impact of the rules:

The information provided with the previous five-year-review report approved by Council in November 2019 indicated that the economic impact of the rules had not differed and that there has been no impact on small business or consumers in the state. The effects on state agencies have not changed and remain unchanged from the previous EIS report submitted with the 2009 amendment of the rules.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

None

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report:

The Department indicated in the previous five-year review report that no course of action was necessary for the rules. However, the Department did state they may undertake an action to strike the moot language contained in R2-15-303B to eliminate the repealed exemption by 1/30/20. This action did not take place and the Department will include these changes in the proposed course of action in this review.

11. A determination that the probable benefits of the rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Department believes that the rules impose the least burden and costs to individuals, public and private entities regulated by these rules. The Department has made every effort to

ensure the procedures outlined for individuals regulated by the rules are efficient, cost effective and necessary to achieving the regulatory objectives.

12. A determination that the rules are not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law, indicating whether:

a. There is a similar regulatory framework governing the same subject matter under federal law,

The federal government does not get involved in the disposal of state property, as disposal of state property is governed by state law. The Federal Surplus Property Program is authorized under ARS 41-2603. The Program complies with federal regulations and there are no corresponding State rules governing the Federal Surplus Property Donation program.
.

b. The rules are more restrictive than a similar requirement in federal law, and

There is no similar requirement in federal law as the federal government does not get involved with the disposal of state property.

c. There is statutory authority for more restrictive requirements than those in federal law.

Federal law does not apply to the disposal of state property.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037, indicating whether:

a. The rule requires issuance of a regulatory permit, license, or agency authorization;

The Department indicates that the rules are not applicable to the requirements imposed by A.R.S. § 41-1037 as the rules were adopted prior to July 29, 2010.

b. The permit, license, or agency authorization falls within the definition of "general permit" in A.R.S. § 41-1001, if a permit, license or agency authorization is issued; or

Not applicable as the answer was provided in 13(a).

c. An exception applies under A.R.S. § 41-1037, if a general permit is not issued.

Not applicable as the answer was provided in 13(a).

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department intends to take the following course of action:

R2-15-303(B) - strike the moot language to eliminate the repealed exemption (A.R.S. § 27-105(6)).
R2-15-303(E) - to include electronic payments
R2-15-307(A)(2) - To include other federal income tax exempt non-profit entities that may not qualify under federal eligibility. (Currently limited to health and educational organizations. Expand to include animal welfare organizations).
R2-15-310.(C)(2). - Increase the $50.00 threshold on item sale proceeds amount to $100 in sales proceeds or nothing is reimbursed.

The Department will submit the proposed rule making by 12/31/25.

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E-3.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 19

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: **November 19, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 19

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) covers thirty-four (34) rules in Title 9, Chapter 19 related to Vital Records and Statistics.

In the 2019 five-year review report the Department stated a plan to revise the rules to address identified issues. The Department completed this course of action through expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020.

Proposed Action

The Department plans to amend the rules in 9 A.A.C. 19 to address issues identified in this 5YRR by December 2025. The Department believes this would be sufficient time to gather stakeholder input during the rulemaking process.

1. **Has the agency analyzed whether the rules are authorized by statute?**

The Department cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that the expedited 2019 rulemaking was intended to improve the rules related to vital records and statistics to reduce a regulatory burden while achieving the same regulatory objective, comply with statutory requirements, and help eliminate confusion on the part of those affected by the rules. The Department believes that the rulemaking achieved these objectives. In addition, the Department estimates that the changes made in 2020 did not increase a cost or burden on those affected by the rules. Rather, the Department believes that those affected by the rules have received a significant benefit for having updated rules.

Stakeholders include the Department, health care providers, funeral establishments, state offices, county partners, Arizona residents and their families, and the general public.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

According to the Department, the purpose of these rules is to establish clear requirements and processes regarding vital records including birth and death certificates. These rules are important to public health because birth and death certificates are essential to each person for identification purposes. In addition, they provide critical data for population statistics, guide resource allocation, enable disease tracking, and help identify health disparities. Thus, the probable benefits of the rules outweigh the probable costs of the rules. Since the requirements are consistent with national standards, the requirements are also the least burdensome method to achieve this purpose.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department received written criticism regarding the rules addressed by this 5YRR during an unrelated rulemaking. The comment concerns R9-19-101 and R9-19-207, and the Department indicated that the comment fell outside the scope of the current rulemaking for which the comment was made.

The comment is included as a separate item in the attached materials, and it can be found on the attached 5YRR Preamble under Section 7 on Page 5.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department states the rules are clear, concise, and understandable with the following exceptions:

- **R9-19-101**
  - The rule would be clearer if the definition of "WIC" included what the acronym stands for.
- **R9-19-101**

- The rule is clear, concise, and understandable but could be improved in the definition of "tribal community" by removing the apostrophe in "affair's" in the name of the Federal Bureau of Indian Affairs Office of Federal Acknowledgement.

- **R9-19-206**
  - Subsection (B)(2) would be clearer if the rule was amended to say adoptive or birth mother. When the rule was originally written, it was the assumption that children would have an adoptive mother, however, it is now common for the birth or natural mother to still be the mother on record. If an adoptive father in AZ moved the child to the US, the way the current rule is written, the Department cannot require anything of the birth/natural mother for the registration since they are not the adoptive mother. A change as such would provide clarification of what is needed in the registration of a record.
- **R9-19-206**
  - The rule would be clearer if there was a new subsection created for establishing a registered record of a foreign birth for an adopted individual who is a foreign-born refugee child in custody of the Department of Child Safety.
- **R9-19-207**
  - Subsection (B)(3)(a) would be clearer if the rule was amended to say "documentation" rather than "document" since there is more than one document required. In addition, subsections (B)(3)(b) and (C)(3)(b) can be simplified by removing the language regarding the specific information in R9-19-201(A)(3) or (4) to be corrected because R9-19-207(B)(3)(a) does not allow the hospitals to submit for a correction or amendment in R9-19-208(C) and (D) for any items on the birth record other than what is covered in R9-19-201(A)(3) or (4).
- **R9-19-317**
  - The rule would be clearer if the typographical error in subsection (B)(2) were corrected by removing the word "of" where it is not necessary.

6. **<u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>**

The Department states the rules are consistent with other rules and statutes with the following exceptions:

- **R9-19-201**
  - The rule would be more consistent with A.R.S. § 36-302(B)(1) if the rules were amended to align with the recommendations of the federal agency responsible for national vital statistics as guidelines subject to modification by the state registrar.
- **R9-19-211**
  - The rule would be more consistent with A.R.S. § 41-1610.03 if the rule allowed for a nonoperating identification license issued according to A.R.S. § 41-1610.03 to be accepted for an incarcerated person.
- **R9-19-303**
  - The rule is not consistent with other rules because the cross-reference in subsection (A)(2) should be updated to R9-19-301.
- **Multiple Rules**

- The Department is revising the rules in 9 A.A.C. 19 to comply with new statutory requirements including;
  - **Laws 2021, Ch. 42**, which amends A.R.S § 41-5001 and mandates the acceptance of consular identification cards with biometric verification by the State and its subdivisions;
  - **Laws 2021, Ch. 195**, which amends A.R.S. § 8-528 related to safe havens for newborns and extends the safe haven protocol age to 30 days;
  - **Laws 2021, Ch. 374**, related to certificates of birth registration, amends A.R.S. § 36-324 and allows for eligible minors aged 16 and above, without a residence address or in the custody of the Department of Child Safety to obtain a non-operating identification license or a certified copy of their birth certificate without parental signatures; and
  - **Laws 2021, Ch. 384**, which amends A.R.S. § 36-340 for sealed birth certificates due to adoption.
- Also, in the rulemaking, the Department is making amendments to fees and additional corrections or corresponding changes throughout the Chapter.
- The Department has filed the Notice of Propose Rulemaking for this current rulemaking and expects the new changes to be in effect by the end of 2024.

7. **<u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>**

The Department states the rules are effective in achieving their objectives with the following exceptions:

- **R9-19-208**
  - The department states that the rule would be more effective if the marital status was referenced as a category. According to A.R.S. § 36-302, if the mother is married, the husband is determined to be the father. However, the Department has had many situations in which the mother marked 'no' on the birth worksheet for being married. In order to correct/change the record, the Department requires a court order to amend a birth record. However, courts will not issue an order regarding this as the statute has determined that the father should be added. This change in the rule would allow for additional data to be collected. Also, the rule would be more effective if the mother's, father's, or registrant's suffix was an option to amend on the individual's registered birth record. In addition, subsection (M) would be more effective if the rule allowed for a guardian to submit the amendment for an adoption.
- **R9-19-212 and 316**
  - The department states that the rule would be more effective in subsection (B), of both Sections, if the rule was amended to require a valid, government-issued form of photo identification or notarized signature.
- **R9-19-310**
  - The rule would be more effective if it was clarified in subsection (C)(2) that the 10-day notification to the informant regarding an amendment is 10 calendar days. Also, the rule would be more effective if the rule required that the informant respond to the notification within 10 days of receipt or date of notification. A change in the

rule as such would provide clear guidance for the public and employees of vital records.

- **R9-19-315**
  - The department states that the rule would be more effective if it was clarified in subsection (A)(1)(e)(ii) was amended for the date of birth to be included if it is known because sometimes applicants requesting a certified copy of a certificate of death registration do not always know the date of birth of the deceased individual.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department states that, while it shares certain information collected under these rules with the National Center for Health Statistics, federal laws are not applicable to the rules in 9 A.A.C. 19.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Under A.R.S. § 41-1001 "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The rules do not require the issuance of a regulatory permit, license, or agency authorization.

11. **Conclusion**

This 5YRR from the Department covers thirty-four (34) rules in Title 9, Chapter 19 related to Vital Records and Statistics.

The Department plans to amend the rules in 9 A.A.C. 19 to address issues identified in this five-year-review report by December 2025. The Department believes this would be sufficient time to gather stakeholder input during the rulemaking process.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

August 20, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 19, Five-Year-Review Report for Vital Records and Statistics

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 19, Vital Records and Statistics, which is due on August 30, 2024.

The Department reviewed the rules in 9 A.A.C. 19, with the intention that the rules do not expire pursuant to A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact me at (602) 542-1020.

Sincerely,

Stacie Gravito
Director's Designee

SG:lf

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 19. Department of Health Services -

Vital Records and Statistics

Due Date: August 30, 2024

Submitted Date: August 20, 2024

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 36-104(3) and 36-136(G)

Specific Statutory Authority: A.R.S. Title 36, Chapter 3, Articles 1 through 3, and A.R.S. §§ 36-132(A)(3) and 36-136(I)(3)

In addition, the following rules have additional specific statutory authority:

Rule	Statutory Authority
R9-19-105	A.R.S. § 36-341
R9-19-202 through R9-19-205 and R9-19-303 through R9-19-306	A.R.S. § 36-343
R9-19-210, R9-19-211, R9-19-212, R9-19-314, R9-19-315, R9-19-316	A.R.S. § 36-342

2. **The objective of each rule:**

The purpose of the rules is to define and prescribe reasonably necessary procedures for the registration of vital events and the issuance, use, and accessibility of the different types of birth and death certificates.

Rule	Objective
R9-19-101	To define terms used in the Chapter so that a reader can consistently interpret requirements.
R9-19-102	To specify requirements related to evidentiary documents submitted to support the creation, correction, or amendment of a vital record for an individual or to request a copy of a certificate issued under this Chapter.
R9-19-103	To establish the process by which information, documents, and, if applicable, fees are reviewed.
R9-19-104	To specify the duties of a local registrar.
R9-19-105	To specify the fees for a noncertified copy of a certificate, certified copy of a certificate, search to verify birth or death data, request to establish a delayed record, or request to amend or correct information. To specify when fees are not charged. To specify surcharges to be paid to the Department.
R9-19-201	To specify the information submitted for an individual's birth record.
R9-19-202	To describe the process by which a hospital requests the registration of the birth of an individual born in a hospital.
R9-19-203	To describe the process by which a physician, registered nurse practitioner, nurse midwife, or midwife who attended an individual's birth may request the registration of the birth of the individual.

R9-19-204	To describe the process by which a person other than a hospital or health care provider may request the registration of the birth of an individual not born in the hospital whose birth was either not attended by a physician, registered nurse practitioner, nurse midwife, or midwife, or was attended by a physician, registered nurse practitioner, nurse midwife, or midwife who is not willing or not able to comply with requirements in R9-19-203.
R9-19-205	To describe the process by which a registered birth record for a foundling is established.
R9-19-206	To describe the process by which a registered record of foreign birth is established for an adopted individual.
R9-19-207	To establish the process by which a person may request the correction of an individual's registered birth record.
R9-19-208	To establish the process by which a person may request an amendment to an individual's registered birth record.
R9-19-209	To specify the circumstances in which the State Registrar may cancel an individual's birth record, the requirement for providing written notice of the intent to cancel, and the right to appeal.
R9-19-210	To specify the content of a certified copy of a certificate of birth registration and the persons eligible to receive a certified copy of an individual's certificate of birth registration.
R9-19-211	To describe the process by which an eligible person may request a certified copy of an individual's certificate of birth registration.
R9-19-212	To specify the content of a noncertified copy of a certificate of birth registration. To describe the process by which specific persons may request a noncertified copy of an individual's certificate of birth registration.
R9-19-301	To specify the content of a form required by A.R.S. § 36-326(B) to accompany a deceased individual's human remains or the human remains from a fetal death moved from a hospital, nursing care institution, or hospice inpatient facility. To require that an individual who removes human remains from a hospital, nursing care institution, or hospice inpatient facility sign and date the applicable human remains release form and submit a copy to the local registrar or deputy local registrar of the registration district where the death or fetal death occurred within 24 hours after removing the human remains from a hospital, nursing care institution, or hospice inpatient facility.
R9-19-302	To specify the information submitted for a deceased individual's death record.
R9-19-303	To describe the process by which a responsible person or funeral director who is responsible for the final disposition of a deceased individual's human remains may request the registration of the deceased individual's death. To describe the process for medical certification of death. To specify factors considered by the State Registrar or the local registrar of the county where a death occurred before registering the death. To describe the processes for requesting the registration of a delayed death record for a deceased individual and for requesting registration of the individual's presumptive death.
R9-19-304	To describe the process by which a deceased individual's registration of death is requested when a medical examiner is notified according to A.R.S. § 11-593(B).
R9-19-305	To describe the process by which a hospital, an abortion clinic, a physician, a nurse midwife, or a midwife may request the registration of a fetal death. To specify the roles in the process of a responsible person or funeral director who is responsible for the final disposition of the human remains and the State Registrar or a local registrar or deputy local registrar of the registration district where a fetal death occurred.
R9-19-306	To describe the process by which the registration of a fetal death is requested when a medical examiner is notified according to A.R.S. § 11-593(B).
R9-19-307	To specify when the State Registrar provides the parent or parents with a certificate of birth resulting in stillbirth.
R9-19-308	To describe the process and specify requirements for obtaining a disposition-transit permit.
R9-19-309	To establish the process by which a person may request the correction of information in a registered death record or registered fetal death record.

R9-19-310	To establish the process by which a person may request the amendment of information in a registered death record or registered fetal death record.
R9-19-311	To specify requirements related to transporting a deceased individual's human remains into Arizona for final disposition.
R9-19-312	To specify requirements related to obtaining a disinterment-reinterment permit.
R9-19-313	To specify the duties of a person in charge of a place of final disposition.
R9-19-314	To specify the content of a certified copy of a certificate of death registration and the persons eligible to receive a certified copy of a deceased individual's certificate of death registration.
R9-19-315	To describe the process by which an eligible person may request a certified copy of a deceased individual's certificate of death registration.
R9-19-316	To specify the content of a noncertified copy of a certificate of death registration. To describe the process by which specific persons may request a noncertified copy of a deceased individual's certificate of death registration.
R9-19-317	To specify the content of and describe the process for obtaining a certificate of fetal death registration or a certificate of birth resulting in stillbirth.

3. Are the rules effective in achieving their objectives? **Yes ___No _X_**

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R9-19-208	The rule would be more effective if the marital status was referenced as a category. According to A.R.S. § 36-302, if the mother is married, the husband is determined to be the father. However, the Department has had many situations in which the mother marked 'no' on the birth worksheet for being married. In order to correct/change the record, the Department requires a court order to amend a birth record. However, courts will not issue an order regarding this as the statute has determined that the father should be added. This change in the rule would allow for additional data to be collected. Also, the rule would be more effective if the mother's, father's, or registrant's suffix was an option to amend on the individual's registered birth record. In addition, subsection (M) would be more effective if the rule allowed for a guardian to submit the amendment for an adoption.
R9-19-212 and R9-19-316	The rule would be more effective in subsection (B), of both Sections, if the rule was amended to require a valid, government-issued form of photo identification or notarized signature.
R9-19-310	The rule would be more effective if it was clarified in subsection (C)(2) that the 10-day notification to the informant regarding an amendment is 10 calendar days. Also, the rule would be more effective if the rule required that the informant respond to the notification within 10 days of receipt or date of notification. A change in the rule as such would provide clear guidance for the public and employees of vital records.
R9-19-315	The rule would be more effective if it was clarified in subsection (A)(1)(e)(ii) was amended for the date of birth to be included if it is known because sometimes applicants requesting a certified copy of a certificate of death registration do not always know the date of birth of the deceased individual.

4. Are the rules consistent with other rules and statutes? **Yes ___ No X __**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-19-201	The rule would be more consistent with A.R.S. § 36-302(B)(1) if the rules were amended to align with the recommendations of the federal agency responsible for national vital statistics as guidelines subject to modification by the state registrar.

R9-19-211	The rule would be more consistent with A.R.S. § 41-1610.03 if the rule allowed for a nonoperating identification license issued according to A.R.S. § 41-1610.03 to be accepted for an incarcerated person.
R9-19-303	The rule is not consistent with other rules because the cross-reference in subsection (A)(2) should be updated to R9-19-301.
Multiple	The Department is revising the rules in 9 A.A.C. 19 to comply with new statutory requirements including; • Laws 2021, Ch. 42, which amends A.R.S § 41-5001 and mandates the acceptance of consular identification cards with biometric verification by the State and its subdivisions; • Laws 2021, Ch. 195, which amends A.R.S. § 8-528 related to safe havens for newborns and extends the safe haven protocol age to 30 days; • Laws 2021, Ch. 374, related to certificates of birth registration, amends A.R.S. § 36-324 and allows for eligible minors aged 16 and above, without a residence address or in the custody of the Department of Child Safety to obtain a non-operating identification license or a certified copy of their birth certificate without parental signatures; and • Laws 2021, Ch. 384, which amends A.R.S. § 36-340 for sealed birth certificates due to adoption. Also, in the rulemaking, the Department is making amendments to fees and additional corrections or corresponding changes throughout the Chapter. The Department has filed the Notice of Propose Rulemaking for this current rulemaking and expects the new changes to be in effect by the end of 2024.

5. Are the rules enforced as written? **Yes _X__ No __**

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. Are the rules clear, concise, and understandable? **Yes ___ No _X_**

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-19-101	The rule would be clearer if the definition of "WIC" included what the acronym stands for.
R9-19-101	The rule is clear, concise, and understandable but could be improved in the definition of "tribal community" by removing the apostrophe in "affair's" in the name of the Federal Bureau of Indian Affairs Office of Federal Acknowledgement.
R9-19-206	Subsection (B)(2) would be clearer if the rule was amended to say adoptive or birth mother. When the rule was originally written, it was the assumption that children would have an adoptive mother, however, it is now common for the birth or natural mother to still be the mother on record. If an adoptive father in AZ moved the child to the US, the way the current rule is written, the Department cannot require anything of the birth/natural mother for the registration since they are not the adoptive mother. A change as such would provide clarification of what is needed in the registration of a record.
R9-19-206	The rule would be clearer if there was a new subsection created for establishing a registered record of a foreign birth for an adopted individual who is a foreign-born refugee child in custody of the Department of Child Safety.

R9-19-207	Subsection (B)(3)(a) would be clearer if the rule was amended to say "documentation" rather than "document" since there is more than one document required. In addition, subsections (B)(3)(b) and (C)(3)(b) can be simplified by removing the language regarding the specific information in R9-19-201(A)(3) or (4) to be corrected because R9-19-207(B)(3)(a) does not allow the hospitals to submit for a correction or amendment in R9-19-208(C) and (D) for any items on the birth record other than what is covered in R9-19-201(A)(3) or (4).
R9-19-317	The rule would be clearer if the typographical error in subsection (B)(2) were corrected by removing the word "of" where it is not necessary.

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes _X No __**

If yes, please fill out the table below:

Rule	Explanation	Department Response
R9-19-101 & R9-19-207	The Department is currently undertaking a rulemaking to implement new legislation and increase program fees. During this rulemaking, the Department received a few comments from Maricopa County related to other rule amendments that would be outside of the scope of that rulemaking. Below are the comments received. 1. R9-19-101 (14) definitions. 14. "Government-issued form of photo identification" means: ii. U.S. Passport Card, v. U.S. Military Identification Card; These two identification cards do not contain a signature on the ID card thus conflicting with R9-19-211, R9-19-212, R9-19-315, R9-19-316. R9-19-317, where it states, "Accompanied by a copy of a valid, government-issued form of photo identification for the person contains the name and signature of the person." While Maricopa County does believe that these two forms ID should be acceptable, they do not currently meet the ADHS requirements in other areas of this chapter. Staff are frequently challenged by holders of these two forms of ID. Might additional consideration be given to these two ID's? Modifications to R9-19-101 definitions. R9-19-207 B(3)(b) Allows for correcting a birth record with either the worksheet or a part of the individual's or mother's individual medical record while R9-19-208 C allows for amending the birth with only a part of the individual's or mother's individual medical record. Both referred to R9-19-201 A (3) or (4). Need further clarification to determine hospital correction vs hospital amendment. Greater distinction and clarification regarding the determination of a hospital correction v. a hospital amendment. Maricopa County proposes that a Certificate of Live Birth Worksheet be considered a correction, and that hospital amendments are instances when the hospital must supplement the worksheet with hospital medical records. (currently, hospitals may submit part of the individual's or mother's individual medical record containing specific information on R9-	The Department thanked Maricopa County for their comments and let them know that these issues would be addressed in the five-year review report and considered in the next rulemaking. After reviewing the comments from Maricopa County, the Department has clarified in policy that a U.S. passport card and a U.S. military ID may be accepted in-person, but a copy sent in the mail would not be acceptable. Furthermore, the Department does not plan to make further amendments related to providing additional clarification to determine hospital correction vs hospital amendment, since these are defined terms pursuant to A.R.S. § 36-301. In regards to a government-issued form of photo identification, the date of birth is not listed on that form of ID. Lastly, the Department plans to amend some of the language in R9-19-207(C)(3)(b) to be clearer.

	19-201 A(3) or (4). Maricopa County appreciates the need to do this but believes that Vital Records rules regarding this matter need greater clarification). There is an opportunity to clean up/clarify the following areas: R9-19-212 C (1)(f)(ii) requiring the date of birth on the government -issued form of photo identification which is not consistent with R9-19-211A(1)(h)(ii), B(3)(ii), and other sections on R9-19-212, R9-19-315, R9-19-316. R9-19-317 where it states "Accompanied by a copy of a valid, government-issued form of photo identification for the person contains the name and signature of the person." Suggest removing R9-19-207 B(3)(b) and allow for correcting hospital errors with birth worksheets only (previously explained above).	

8. Economic, small business, and consumer impact comparison:

Arizona Revised Statutes (A.R.S.) § 36-136(I)(3) requires the Arizona Department of Health Services (Department) to define and prescribe reasonably necessary procedures for the use and accessibility of the different types of birth and death certificates and the completion, change, and amendment of vital records. A.R.S. Title 9, Chapter 3, specifies requirements for vital records and public health statistics, including birth and death registration and certificates. The Department has adopted rules for vital records and statistics in Arizona Administrative Code (A.A.C.) Title 9, Chapter 19. In general, stakeholders for the rulemaking included the Department, health care providers, funeral establishments, state offices, county partners, Arizona residents and their families, and the general public. In this economic, small business, and consumer impact comparison, the annual cost and revenue changes are designated as minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

In 2023, there were 77,776 births registered and 68,635 deaths registered. In 2022, there were 78,335 births registered and 73,861 deaths registered. In 2021, there were 77,857 births registered and 81,482 deaths registered. In 2020, there were 76,781 births registered and 75,700 deaths registered. A summary of certificates issues and corrections/amendment made in 2023 is shown below:

Description of Services Provided in FY 2024	Counties	State
Certificates of Birth Registration – Non-certified	196,216	51,014
Certificates of Death Registration – Non-certified	438,767	12,821
Certificates of Fetal Death Registration – Non-certified	348	13
Certificates of Birth Registration - Certified	198,993	51804
Certificates of Death Registration - Certified	445,846	13,081
Certificates of Fetal Death Registration - Certified	357	15
Certificates of Birth Resulting in Stillbirth - Certified	357	15
Certificates of No Record	N/A	379
Amendment/Correction of a Birth Record	10,025	2,513
Amendment/Correction of a Death Record	741	103
Amendment/Correction of a Fetal Death Record	6	0

From funds collected through surcharges from the counties and from certificates issued by the Department in FY 2023, the Department, in compliance with A.R.S. § 341, deposited approximately $2,661,450 into the vital records electronic systems fund, established by A.R.S. § 36-341.01, and approximately $445,660 into the general fund. The Department was appropriated $3,637,400 from the vital records electronic systems fund in FY 2023 and $3,630,200 in FY 2024. Expenses for the Bureau of Vital Records from the vital records electronic systems fund were $3,500,157.86 in FY 2023 and, as of July 8, 2019, $2,541,529.44 in FY 2024.

The rules were last amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020. In the 2020 expedited rulemaking, the Department amended 14 Sections, including R9-19-101, R9-19-104, R9-19-201, R9-19-202, R9-19-204, R9-19-208, R9-19-210, R9-19-301, R9-19-304, R9-19-305, R9-19-306, R9-19-309, R9-19-314, and R9-19-315. The rulemaking amended the rules to be consistent with A.R.S. § 36-324(A), as amended by Laws 2019, Ch. 172, which requires the rules to include the designee of a funeral director as being eligible to request or receive a certified copy of a deceased individual's certificate of death registration. Other changes to the rules were revisions made to add clarity and address issues identified in the 2019 five-year review report approved by the Governor's Regulatory Review Council. These amendments included correcting cross-references and grammatical errors, amending the rules to align with new statutory requirements, and updating language to be more clear, concise, and understandable. In R9-19-208, the rule was amended to allow the last name of an individual's father to be changed without requiring the father to obtain a court order. In R9-19-301, the rule was amended to require the e-mail address of the health care provider expected to sign the medical certification of death on the human remains release form to facilitate communication between a funeral establishment and the medical certifier. R9-19-311 was amended to be consistent with A.R.S. § 36-326(J) which requires the issuance of an Arizona disposition-transit permit upon receipt of a disposition-transit permit from another state. A.R.S. § 36-326(G) allows a disposition-transit permit to be issued if a funeral establishment or other responsible person provides information "pursuant to this [C]hapter and rules adopted pursuant to this [C]hapter," which would be included in a registered death certificate from another state. Furthermore, in R9-19-314(B)(5) was amended to include powers of attorney for a person eligible according to subsection (B)(2), (3), or (4).

The changes in the 2019 expedited rulemaking were intended to improve the rules related to vital records and statistics to reduce a regulatory burden while achieving the same regulatory objective, comply with statutory requirements, and help eliminate confusion on the part of those affected by the rules. The Department believes that the rulemaking achieved these objectives. In addition, the Department estimates that the changes made in 2020 did not increase a cost or burden on those affected by the rules. Rather the Department believes that those affected by the rules have received a significant benefit for having updated rules.

9. Has the agency received any business competitiveness analyses of the rules? **Yes ___ No _X_**

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the 2019 five-year review report the Department stated a plan to revise the rules to address identified issues. The Department completed this course of action through expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The purpose of these rules is to establish clear requirements and processes regarding vital records including birth and death certificates. These rules are important to public health because birth and death certificates are essential to each person for identification purposes. In addition, they provide critical data for population statistics, guide resource allocation, enable disease tracking, and help identify health disparities. Thus, the probable benefits of the rules outweigh the probable costs of the rules. Since the requirements are consistent with national standards, the requirements are also the least burdensome method to achieve this purpose.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

Although the Department shares certain information collected under these rules with the National Center for Health Statistics, federal laws are not applicable to the rules in 9 A.A.C. 19.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department plans to amend the rules in 9 A.A.C. 19 to address issues identified in this five-year-review report by December 2025. The Department believes this would be sufficient time to gather stakeholder input during the rulemaking process.

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

12. Take appropriate steps to reduce or contain costs in the field of health services.

13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.

14. Encourage an effective use of available federal resources in this state.

15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.

16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.

17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.

18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.

19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.

22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall

prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information to promote good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of educating children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in coordinating local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in enforcing the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes and behavioral-supported group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that a licensing period shall not be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary

measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the

Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe

minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrative order" means a written decision issued by an administrative law judge or quasi-judicial entity.

2. "Amend" means to make a change, other than a correction, to a registered certificate by adding, deleting or substituting information on that certificate.

3. "Birth" or "live birth" means the complete expulsion or extraction of an unborn child from the child's mother, irrespective of the duration of the pregnancy, that shows evidence of life, with or without a cut umbilical cord or an attached placenta, such as breathing, heartbeat, umbilical cord pulsation or definite voluntary muscle movement after expulsion or extraction of the unborn child.

4. "Certificate" means a record that documents a birth or death.

5. "Certified copy" means a written reproduction of a registered certificate that a local registrar, a deputy local registrar or the state registrar has authenticated as a true and exact written reproduction of a registered certificate.

6. "Correction" means a change made to a registered certificate because of a typographical error, including misspelling and missing or transposed letters or numbers.

7. "Court order" means a written decision issued by:

(a) The superior court, an appellate court or the supreme court or an equivalent court in another state.

(b) A commissioner or judicial hearing officer of the superior court.

(c) A judge of a tribal court in this state.

8. "Current care" means that a health care provider has examined, treated or provided care for a person for a chronic or acute condition within eighteen months preceding that person's death. Current care does not include services provided in connection with a single event of emergency or urgent care. For the purposes of this paragraph, "treated" includes prescribing medication.

9. "Custody" means legal authority to act on behalf of a child.

10. "Department" means the department of health services.

11. "Electronic" means technology that has electrical, digital, magnetic, wireless, optical or electromagnetic capabilities or technology with similar capabilities.

12. "Evidentiary document" means written information used to prove the fact for which the document is presented.

13. "Family member" means:

(a) A person's spouse, natural or adopted offspring, father, mother, grandparent, grandchild to any degree, brother, sister, aunt, uncle or first or second cousin.

(b) The natural or adopted offspring, father, mother, grandparent, grandchild to any degree, brother, sister, aunt, uncle or first or second cousin of the person's spouse.

14. "Fetal death" means the cessation of life before the complete expulsion or extraction of an unborn child from the child's mother that is evidenced by the absence of breathing, heartbeat, umbilical cord pulsation or definite voluntary muscle movement after expulsion or extraction.

15. "Final disposition" means the interment, cremation, removal from this state or other disposition of human remains.

16. "Foundling" means:

(a) A newborn infant left with a safe haven provider pursuant to section 13-3623.01.

(b) A child whose father and mother cannot be determined.

17. "Funeral establishment" has the same meaning prescribed in section 32-1301.

18. "Health care institution" has the same meaning prescribed in section 36-401.

19. "Health care provider" means:

(a) A physician licensed pursuant to title 32, chapter 13 or 17.

(b) A doctor of naturopathic medicine licensed pursuant to title 32, chapter 14.

(c) A midwife licensed pursuant to chapter 6, article 7 of this title.

(d) A nurse midwife certified pursuant to title 32, chapter 15.

(e) A nurse practitioner licensed and certified pursuant to title 32, chapter 15.

(f) A physician assistant licensed pursuant to title 32, chapter 25.

(g) A health care provider who is licensed or certified by another state or jurisdiction of the United States and who works in a federal health care facility.

20. "Human remains" means a lifeless human body or parts of a human body that permit a reasonable inference that death occurred.

21. "Issue" means:

(a) To provide a copy of a registered certificate.

(b) An action taken by a court of competent jurisdiction, administrative law judge or quasi-judicial entity.

22. "Legal age" means a person who is at least eighteen years of age or who is emancipated by a court order.

23. "Medical certification of death" means the opinion of the health care provider who signs the certificate of probable or presumed cause of death that complies with rules adopted by the state registrar of vital records and that is based on any of the following that is reasonably available:

(a) Personal examination.

(b) Medical history.

(c) Medical records.

(d) Other reasonable forms of evidence.

24. "Medical examiner" means a medical examiner or alternate medical examiner as defined in section 11-591.

25. "Name" means a designation that identifies a person, including a first name, middle name, last name or suffix.

26. "Natural causes" means those causes that are due solely or nearly entirely to disease or the aging process.

27. "Presumptive death" means a determination by a court that a death has occurred or is presumed to have occurred but the human remains have not been located or recovered.

28. "Register" means to assign an official state number and to incorporate into the state registrar's official records.

29. "Responsible person" means a person listed in section 36-831.

30. "Seal" means to bar from access.

31. "Submit" means to present, physically or electronically, a certificate, evidentiary document or form provided for in this chapter to a local registrar, a deputy local registrar or the state registrar.

32. "System of public health statistics" means the processes and procedures for:

(a) Tabulating, analyzing and publishing public health information derived from vital records data and other sources authorized pursuant to section 36-125.05 or section 36-132, subsection A, paragraph 3.

(b) Performing other activities related to public health information.

33. "System of vital records" means the statewide processes and procedures for:

(a) Electronically or physically collecting, creating, registering, maintaining, copying and preserving vital records.

(b) Preparing and issuing certified and noncertified copies of vital records.

(c) Performing other activities related to vital records.

34. "Unborn child" has the same meaning prescribed in section 36-2151.

35. "Vital record" means a registered birth certificate or a registered death certificate.

36-302. System of vital records; powers and duties of the state registrar

A. The director of the department is the state registrar of vital records.

B. The state registrar of vital records shall:

1. Adopt rules to implement a statewide system of vital records pursuant to this chapter using the recommendations of the federal agency responsible for national vital statistics as guidelines subject to modification by the state registrar.

2. Administer and enforce this chapter and the rules adopted pursuant to this chapter and provide for the efficient administration of a statewide system of vital records.

3. Organize, operate and maintain the only system of vital records in this state.

4. Direct and supervise the creation and registration of vital records, electronically and physically, and be the custodian of vital records.

5. Establish registration districts throughout this state.

6. Appoint, direct and remove local registrars.

7. Prescribe and distribute forms required pursuant to this chapter and rules adopted pursuant to this chapter.

8. Prepare and issue copies of vital records.

9. Provide a means for the public to request a copy of a vital record and grant or deny the request according to criteria prescribed by rules adopted pursuant to this chapter. These rules shall include eligibility criteria, proof of identity requirements and payment requirements to obtain the requested vital record.

10. Pursuant to section 16-165, transmit each month to the county recorder a record of the death of each resident of the county recorder's county who is at least sixteen years of age.

11. Determine acceptability and completeness of a certificate, evidentiary document or form submitted to the state registrar.

12. Investigate violations of this chapter and rules adopted pursuant to this chapter.

13. Report violations of this chapter and rules adopted pursuant to this chapter to the county attorney in the registration district in which the violation occurs or to the attorney general.

C. The state registrar may:

1. Appoint, in writing, one or more persons to serve as assistant state registrars with any or all powers and duties vested in the state registrar.

2. Appoint, direct and remove a deputy local registrar.

3. Inspect a registration district's certificates, evidentiary documents, forms or other information related to the system of vital records.

4. Establish quality control procedures that include on-site inspections and review of evidentiary documents, forms and other information used in the creation of vital records.

5. Consolidate or subdivide registration districts.

36-303. System of public health statistics; powers and duties of the department

A. The department shall:

1. Administer and enforce this chapter and rules adopted pursuant to this chapter.

2. Provide for the efficient administration of a system of public health statistics.

B. The department may adopt rules to implement a system of public health statistics pursuant to this chapter.

36-311. Appointment and removal of local registrars and deputy local registrars

A. The state registrar shall appoint the county health officer of the county health department as the local registrar for a registration district. If a county health department does not have a county health officer, the state registrar shall appoint an employee of the county health department as the local registrar for a registration district.

B. With notice to the state registrar, the local registrar may appoint one or more persons to serve as deputy local registrars with any of the duties vested in the local registrar.

C. The state registrar may remove a local registrar or a deputy local registrar who does not comply with this chapter or rules adopted pursuant to this chapter or for any other reasonable cause.

D. After notice to the state registrar, the local registrar may remove a deputy local registrar who does not comply with this chapter or rules adopted pursuant to this chapter or for any other reasonable cause.

E. The state registrar may abolish the office of a local registrar if the registration district for which the local registrar is appointed is combined with another registration district.

36-312. Local registrars and deputy local registrars; powers and duties

A local registrar and deputy local registrar of a registration district shall:

1. Administer and enforce this chapter and rules adopted pursuant to this chapter.

2. Assist the state registrar in investigating violations of this chapter and rules adopted pursuant to this chapter.

3. Electronically or physically submit certificates, evidentiary documents and forms to the state registrar as directed by the state registrar.

4. Register certificates only as directed by the state registrar.

5. Preserve and maintain records and perform other duties required by the state registrar.

6. At the request of the state registrar, make certificates, evidentiary documents or forms related to the system of vital records available to the state registrar for inspection.

7. At the request of the state registrar, provide birth certificates and death certificates to the state registrar.

8. Prepare and issue copies of certificates according to rules adopted pursuant to this chapter.

36-321. Information required for a certificate

A. The state registrar shall prescribe by rule the information required to be submitted to create or amend a vital record.

B. A person who submits a certificate for registration must make a reasonable effort to ensure that the information on the certificate is correct and accurate.

C. A certificate registered pursuant to this chapter must include an official state number and the date of registration.

36-322. Sealing a certificate

A. The state registrar shall seal a certificate and evidentiary documents when the state registrar amends the registered certificate.

B. Unless required by a court order and except as provided in section 36-340, the state registrar shall not issue a copy of a certificate or other record sealed pursuant to this section.

36-323. Amending registered certificates: corrections

A. The state registrar shall amend a registered certificate pursuant to this chapter and rules adopted pursuant to this chapter.

B. The state registrar shall amend a registered birth certificate to show the new name of a person born in this state if:

1. The person, the person's parent or the person's legal guardian requests the new name and the state registrar receives a court order to change the person's name on the registered birth certificate.

2. A voluntary acknowledgement of paternity submitted pursuant to section 25-812 includes a request to change the person's name on the registered birth certificate.

C. The state registrar shall adopt rules for making corrections to vital records.

36-324. Vital records; copies; access

A. On written request, a local registrar, a deputy local registrar or the state registrar shall issue a certified copy of a registered certificate, except the portion of the certificate that contains medical information, to any person determined to be eligible to receive the certified copy pursuant to criteria prescribed by rules. A local registrar, a deputy local registrar or the state registrar shall issue certified copies of a registered certificate to a licensed funeral director or the funeral director's designee on the funeral director's or designee's written or in-person request. The local registrar, deputy local registrar or state registrar shall provide the certified copies by mail or in person to the funeral director or the funeral director's designee on request.

B. A certified copy of a registered certificate has the same status as the registered certificate.

C. The United States public health service may receive copies, microfilm and other information from the state registrar to prepare national vital statistics subject to the following limitations:

1. The United States public health service bears the cost of preparing and transmitting the copies, microfilm and other information.

2. The copies, microfilm and other information are used for statistical purposes and the United States public health service assures a person's anonymity.

D. In child support cases under 42 United States Code sections 651 through 669 or in public benefit matters under chapter 29 of this title or title 46, the state registrar shall provide copies of or access to vital records without charge to the department of economic security or its attorneys. In child welfare cases under title 8, the state registrar shall provide copies of or access to vital records without charge to the department of child safety or its attorneys. A vital record obtained as authorized in this section must be used only for official purposes and, if used in a public proceeding, must be sealed by the court or hearing officer.

E. The state registrar shall provide a copy of or access to a vital record to a government agency for its official purposes.

F. Notwithstanding any other law, a child who is at least sixteen years of age and who either does not have a residence address or is in the department of child safety's custody may receive a certified copy of the child's certificate of birth registration without the signature of the child's parent, guardian or foster parent.

36-325. Death certificate registration; moving human remains; immunity

A. Within seven calendar days after receiving possession of human remains, a funeral establishment or responsible person who takes possession of the human remains shall:

1. Obtain and complete the information, including the social security number of the decedent, on the death certificate required pursuant to this chapter and rules adopted pursuant to this chapter.

2. Provide on the death certificate the name and address of the person completing the death certificate.

3. Submit the death certificate for registration to a local registrar, a deputy local registrar or the state registrar. The funeral establishment or responsible person may submit the death certificate by electronic means in the format prescribed by the state registrar.

B. Within seventy-two hours after receiving a death certificate pursuant to this section, a local registrar, a deputy local registrar or the state registrar shall register a death certificate if it is accurate and complete and submitted pursuant to this chapter and rules adopted pursuant to this chapter.

C. If a county medical examiner or alternate medical examiner determines that the circumstances of a death provide jurisdiction pursuant to section 11-593, subsection B, the medical examiner or alternate medical examiner shall complete and sign the medical certification of death on a death certificate within seventy-two hours after the examination, excluding weekends and holidays. If the medical examiner or alternate medical examiner cannot determine the cause of death within that time, the medical examiner or alternate medical examiner shall enter "pending" for the cause of death and sign the medical certification of death within seventy-two hours after the examination, excluding weekends and holidays.

D. A local registrar, a deputy local registrar or the state registrar shall register a death certificate if there is a medical certification of death signed by the medical examiner or alternate medical examiner with a pending cause of death.

E. Final disposition of human remains with a pending cause of death shall not occur until the medical examiner or alternate medical examiner releases the human remains for final disposition.

F. When the medical examiner or alternate medical examiner determines the cause of death, the medical examiner or alternate medical examiner shall submit the information to the local registrar, deputy local registrar or state registrar.

G. If a person under the current care of a health care provider for an acute or chronic medical condition dies of that condition, or complications associated with that condition, the health care provider or a health care provider designated by that provider shall complete and sign the medical certification of death on a death certificate within seventy-two hours. If current care has not been provided, the medical examiner or alternate medical examiner shall complete and sign the medical certification of death on a death certificate within seventy-two hours after the examination, excluding weekends and holidays.

H. If a person dies in a hospital, nursing care institution or hospice inpatient facility of natural causes, the hospital, nursing care institution or facility shall designate a health care provider to complete and sign the medical certification of death within seventy-two hours.

I. If a person dies on an Indian reservation in this state and a county medical examiner or alternate medical examiner is not available, the tribal law enforcement authority, acting in an official investigative capacity, may complete and sign the medical certification of death.

J. If the place of death is unknown, the death is considered to have occurred in the place where the human remains were found.

K. If a person dies in a moving conveyance, the death is considered to have occurred in the place where the human remains were initially removed from the conveyance. In all other cases, the place where death is pronounced is considered the place where the death occurred.

L. The state registrar shall create and register a death certificate when the state registrar receives a court order of a presumptive death. The court order shall contain the following information, if known:

1. The decedent's name, social security number, date of birth, date of death, cause of death and location of death.

2. Any other information necessary to complete a death certificate for a presumptive death.

M. If a murder victim's body is not recovered, a conviction for the murder is proof of death. The court shall forward a record of the conviction to the state registrar. The state registrar shall obtain the personal data regarding the murder victim from information provided by the court, a family member of the murder victim or another reliable source and create and register the death certificate.

N. A health care provider who completes and signs a medical certification of death in good faith pursuant to this section is not subject to civil liability or professional disciplinary action.

36-325.01. Delayed death certificate registration

If a death occurs in this state and is not registered within one year after the date of the death, the local registrar, deputy local registrar or state registrar shall register the death certificate as a delayed death certificate.

36-326. Disposition-transit permits

A. A funeral establishment or responsible person who takes possession of human remains shall obtain a disposition-transit permit from a local registrar, a deputy local registrar or the state registrar before doing either of the following:

1. Providing final disposition of the human remains.

2. Moving the human remains out of this state.

B. Human remains that are moved from a hospital, nursing care institution or hospice inpatient facility must be accompanied by a form provided by the hospital, nursing care institution or hospice

inpatient facility authorizing the release of the human remains. The form shall contain the information required in rules adopted pursuant to this chapter.

C. A funeral establishment or responsible person may move human remains from a hospital, nursing care institution or hospice inpatient facility where death occurred without obtaining a disposition-transit permit if the funeral establishment or responsible person does not remove the human remains from this state and provides notice to the local registrar or deputy local registrar in the registration district where the death occurred within twenty-four hours after moving the human remains.

D. A funeral establishment or responsible person may move human remains from a place other than a hospital, nursing care institution or hospice inpatient facility where death occurred without obtaining a disposition-transit permit if the funeral establishment or responsible person does not remove the human remains from this state and provides notice to the local registrar or deputy local registrar in the registration district where death occurred within seventy-two hours after moving the human remains.

E. Embalmed human remains, disinterred human remains and human remains that are not embalmed that are shipped by common carrier inside or outside of this state for the purposes of burial, cremation or funeral services shall be placed in a suitable shipping container that is designed for transporting human remains. Human remains that are not embalmed and that are shipped inside or outside of this state are not required to be transported within twenty-four hours after death.

F. A hospital or abortion clinic is not required to obtain a disposition-transit permit if an unborn child is expelled or extracted at the hospital or abortion clinic and all the following apply:

1. The gestation period of the unborn child is less than twenty weeks or, if the gestation period is unknown, the weight of the unborn child is less than three hundred fifty grams.

2. A county medical examiner's investigation is not required.

3. The woman on whom the abortion was performed has authorized the hospital or abortion clinic to dispose of the unborn child.

G. To obtain a disposition-transit permit, a funeral establishment or responsible person must submit the information required pursuant to this chapter and rules adopted pursuant to this chapter to the state registrar or to the local registrar or deputy local registrar of the registration district where the death occurred.

H. A local registrar, a deputy local registrar or the state registrar shall provide a disposition-transit permit to a funeral establishment or other responsible person if the information provided pursuant to subsection B of this section complies with this chapter and rules adopted pursuant to this chapter.

I. A local registrar, a deputy local registrar or the state registrar shall provide a disposition-transit permit for interment of human remains in a cemetery only if the location of the cemetery has been recorded in the office of the county recorder in the county where the cemetery is located or the cemetery is located on federal or tribal land.

J. A local registrar, a deputy local registrar or the state registrar shall provide a disposition-transit permit issued by this state for the final disposition of human remains in this state on receipt of a disposition-transit permit from another state that accompanies the human remains from the other state.

36-327. Disinterment-reinterment permit

A. Except as otherwise provided by law, a disinterment-reinterment permit is required before a person disinters human remains. The state registrar shall provide a permit to disinter human remains either by a court order issued in this state or by the written consent of the decedent's family member who has the highest priority. The order of priority is the same as provided in section 36-831.

B. A disinterment-reinterment permit is not required if disinterment and reinterment occur in the same cemetery for ordinary relocation or for reasons of internal management of the cemetery.

36-328. Registration of a death certificate for a foreign presumptive death

A. The state registrar shall create and register a death certificate for a foreign presumptive death if the state registrar receives a court order issued in this state of a presumptive death of a resident of this state in a foreign country. The court order shall contain the following information, if known:

1. The decedent's name, social security number, date of birth, date of death, cause of death and location of death.

2. Any other information necessary to complete a death certificate for a foreign presumptive death.

B. A death certificate for a foreign presumptive death shall state on the death certificate the name of the foreign country where death is presumed to have occurred.

36-329. Fetal death certificate registration

A. A hospital, abortion clinic, physician or midwife shall submit a completed fetal death certificate to the state registrar for registration within seven days after the fetal death for each fetal death occurring in this state after a gestational period of twenty completed weeks or if the unborn child weighs more than three hundred fifty grams.

B. The requirements for registering a fetal death certificate are the same as the requirements for registering a death certificate prescribed in section 36-325.

36-329.01. Delayed fetal death certificate registration

A. If a fetal death occurs in this state and is not registered within one year after the date of the fetal death, the local registrar, deputy local registrar or state registrar shall register the fetal death certificate as a delayed fetal death certificate.

B. The requirements for registering a delayed fetal death certificate are the same as the requirements for registering a delayed death certificate prescribed in section 36-325.01.

36-330. Certificate of birth resulting in stillbirth; requirements

A. In addition to the requirements of section 36-329, the state registrar shall establish a certificate of birth resulting in stillbirth on a form approved by the state registrar for each fetal death occurring in this state after a gestational period of at least twenty completed weeks. This certificate shall be offered to the parent or parents of a stillborn child.

B. A certificate of birth resulting in stillbirth shall meet all of the format and filing requirements for birth certificates prescribed in section 36-333.

C. The person who prepares a certificate pursuant to this section shall leave blank any references to the stillborn child's name if the stillborn child's parent or parents do not wish to provide a name for the stillborn child.

D. Notwithstanding subsections A and B of this section, the certificate of birth resulting in stillbirth shall be submitted to the designated registrar within seven days following the delivery and before the cremation or removal of the fetus from the registration district.

36-330.01. Delayed registration of certificate of birth resulting in stillbirth

If a birth resulting in stillbirth occurring in this state has not been registered within one year after the date of delivery, a certificate of birth resulting in stillbirth marked "delayed" may be submitted and registered pursuant to this chapter and rules adopted pursuant to this chapter and other requirements sufficient to substantiate the alleged facts of a birth resulting in stillbirth.

36-331. Duties of persons in charge of place of disposition

A. Except as otherwise provided by law, a person in charge of a place of disposition shall not inter, cremate or allow other disposition of human remains without receiving a disposition-transit permit with the human remains.

B. A person in charge of a place of disposition shall maintain a record of a disposition pursuant to rules adopted pursuant to this chapter.

C. A person in charge of a place of disposition shall permit the state registrar to inspect the disposition records.

36-332. Notification of death to responsible person and release of human remains

A health care institution shall not release human remains or allow the removal of human remains from the health care institution until the health care institution makes a diligent effort to notify the responsible person and obtain the name of the entity to whom the human remains are to be released.

36-333. Birth certificate registration

A. Within seven days after a child's birth in this state, a person shall submit to a local registrar, a deputy local registrar or the state registrar, a birth certificate for registration according to rules adopted pursuant to this chapter. The birth certificate shall be submitted physically or electronically through the state designated electronic registration system. A local registrar, a deputy local registrar or the state registrar may accept a certificate submitted electronically without the signatures required by rule.

B. If a birth occurs at a hospital, the chief administrative officer of the hospital or that person's designee shall:

1. Obtain the information for a birth certificate, including signatures and social security numbers required by rule.

2. Fill out the birth certificate.

3. Submit the birth certificate for registration to a local registrar, a deputy local registrar or the state registrar.

4. Maintain a copy of the evidentiary documents used to fill out the birth certificate for ten years after the date of submission.

C. If a birth does not occur at a hospital one of the following persons shall obtain the information, evidentiary documents, social security numbers and signatures required by rule for a birth certificate, fill out the birth certificate and submit the birth certificate for registration to a local registrar, a deputy local registrar or the state registrar:

1. A physician, nurse or midwife who is present at the birth and who is willing and able to do so during or immediately after the birth.

2. If a physician, nurse or midwife is not present at the birth or is not willing or able to do so, the child's mother or father or a family member of legal age who is present, willing and able to do so during or immediately after the birth.

3. If the child's father or other family member of legal age is not present or is not willing or able and the child's mother is not willing or able to supply the required information, any other person who is present during or immediately after the child's birth and who can supply the required information.

D. If a birth occurs in a moving conveyance, the birth is considered to have occurred in the place where the child is initially removed from the conveyance. If the child is initially removed from the conveyance at a hospital, the person named in subsection B shall submit the birth certificate to the state registrar or the local registrar or deputy local registrar of the registration district where the child is first removed. If the child is initially removed from the conveyance at any location other than at a hospital, the person identified in subsection C shall submit the birth certificate to the state registrar or to the local registrar or deputy local registrar of the registration district where the child is first removed.

E. A local registrar, a deputy local registrar or the state registrar shall register a birth certificate if the birth certificate is accurate and complete and submitted according to this chapter and rules adopted pursuant to this chapter.

36-333.01. Late birth certificate registration

If a completed birth certificate and evidentiary documents are submitted to a local registrar, a deputy local registrar or the state registrar for registration more than seven days but less than one year after the date of birth, the local registrar, deputy local registrar or state registrar shall register the birth certificate as a late birth certificate if the information on the birth certificate and evidentiary documents are accurate and complete, support the registration of the late birth certificate and are submitted pursuant to this chapter and rules adopted pursuant to this chapter.

36-333.02. Delayed birth certificate registration

A. If a birth certificate of a person who is born in this state is not registered within one year after the date of birth, a person authorized by this chapter may submit to the state registrar information and evidentiary documents that support the creation and registration of a delayed birth certificate.

B. The state registrar may waive the information and evidentiary document requirements in subsection A of this section for a birth that occurred before 1970.

C. The state registrar shall create a delayed birth certificate that includes a listing of the information and evidentiary documents submitted pursuant to subsection A of this section.

D. The state registrar shall register a delayed birth certificate if the information and evidentiary documents are accurate and complete, support the creation and registration of the delayed birth certificate and are submitted pursuant to this chapter and rules adopted pursuant to this chapter.

E. If the state registrar determines that the information and evidentiary documents are not accurate and complete or do not support the creation and registration of the delayed birth certificate, the state registrar shall not create and register the delayed birth certificate, shall notify the person requesting a delayed birth certificate of the reasons for not creating and registering the delayed birth certificate and shall advise the person requesting a delayed birth certificate of that person's right to petition for a court order pursuant to section 36-333.03.

F. The state registrar shall establish documentation requirements for Native Americans who were born before 1970 and who are requesting delayed birth certificates. If a requesting party presents documents that do not meet the documentation requirements established by the state registrar, the director shall review the documents submitted and determine whether to create and register a delayed birth certificate.

36-333.03. Record of birth; petition; requirements; notice; court order; definition

A. If a delayed birth certificate for a person who is born in this state is not created and registered pursuant to section 36-333.02, that person or, if the person is under eighteen years of age, the person's parent or legal guardian may petition the court for an order to establish a record of the person's date of birth, place of birth and parentage.

B. The petition must allege:

1. That the person for whom a delayed birth certificate is requested was born in this state.

2. That the person's birth is not registered in another state or country.

3. That a record of birth for the person cannot be found in this state's vital records.

4. That despite diligent efforts the petitioner was unable to obtain the information and evidentiary documents required for the creation and registration of a delayed birth certificate.

5. That the state registrar has refused to create and register a delayed birth certificate.

6. Any other allegations the petitioner believes would be useful to the court.

B. The petitioner shall submit to the court a copy of the notification provided pursuant to section 36-333.02, subsection E and all information and evidentiary documents that were submitted to the state registrar to support the request for the registration of a delayed birth certificate.

C. The court shall set a date, time and place for a hearing on the petition and shall provide notice of the date, time and place to the state registrar and the petitioner at least twenty days before the hearing. The state registrar may appear and testify at the hearing.

D. If the court finds that the evidence presented for the petitioner supports the creation and registration of a delayed birth certificate, the court shall establish the facts of birth, including parentage and any other findings that may be required, and shall issue an order to create and register a delayed birth certificate on a form that is provided by the state registrar and that includes the facts of birth, a description of the information and evidentiary documents submitted to the court and the date of the court's action.

E. The clerk of the court shall forward an order issued pursuant to subsection D of this section to the state registrar not later than the tenth day of the calendar month following the month in which the court issued its order. Based on the information contained in the order, the state registrar shall create and register a delayed birth certificate that includes a list of the information and evidentiary documents as stated in the order.

F. For the purposes of this section, "court" means the superior court or tribal court.

36-334. Determining maternity and paternity for birth certificates

A. A person completing a birth certificate shall state the name of the woman who gave birth to the child on the birth certificate as the child's mother unless otherwise provided by law or court order.

B. The state registrar shall not refuse to register a birth certificate because the birth certificate does not include the name of the father.

C. If a father's name is stated on a birth certificate, the father's name shall be stated on a birth certificate as follows:

1. Except as provided in section 25-814, if the mother is married at the time of birth or was married at any time in the ten months before the birth, the name of the mother's husband.

2. If a mother and father who are not married to each other at the time of birth and were not married to each other in the ten months before the birth voluntarily acknowledge paternity pursuant to section 25-812, the name of the father acknowledging paternity.

3. If the state registrar receives an administrative order or a court order establishing paternity, the father's name in the order.

D. If the acknowledgement of paternity is rescinded pursuant to section 25-812, the state registrar shall remove the father's name from the registered birth certificate.

36-335. Birth registration for foundlings

A. A person who has custody of a foundling shall submit to the state registrar or to the local registrar or a deputy local registrar of the registration district where the foundling was found the following information:

1. The date the foundling was found.

2. The location where the foundling was found.

3. The sex, approximate race and approximate age of the foundling.

4. The name and address of the person who has custody of the foundling.

5. The name given to the foundling by the person who has custody of the foundling.

6. Any other data required by rules adopted pursuant to this chapter.

B. The state registrar shall create and register a birth certificate for a foundling and enter on the birth certificate the following information:

1. The location where the foundling was found as the place of birth.

2. The date of birth based on the approximate age of the foundling.

C. A person who has custody of a foundling and determines the foundling's identity shall notify the state registrar in writing of the determination.

D. If the identity of a foundling is determined, the state registrar shall seal the foundling's registered birth certificate and provide access to the foundling's registered birth certificate only pursuant to a court order issued in this state.

36-336. Adoption certificate

A. For an adoption of a person born in this state, a state court shall submit to the state registrar an adoption certificate on a form approved by the state registrar or pursuant to a court order that includes:

1. Information required by rule about the adoptive father and adoptive mother.

2. Information required by rule about the child being adopted.

3. A statement by the court that the information on the adoption certificate is accurate.

4. The contact preference form prescribed in section 36-340.

B. For an adoption of a person born in this state and ordered by a court in another state, the state registrar shall accept an order for an adoption or an adoption certificate that contains the information in subsection A.

C. If a court modifies a court order for adoption, the state registrar shall follow the procedures in this chapter for amending a registered certificate.

D. By the tenth day of each month, a court in this state shall submit to the state registrar all adoption certificates, court orders for adoption and court orders for modification of adoption for the preceding month.

E. When the state registrar receives an adoption certificate, a court order for adoption, a change to a court order for adoption or an annulment of an adoption for a person born in another state, the state registrar shall send the document to the appropriate registration authority in the state where the person was born.

36-337. Amending birth certificates

A. The state registrar shall amend the birth certificate for a person born in this state when the state registrar receives any of the following:

1. Except as provided in subsection D of this section, an adoption certificate or a court order for adoption required pursuant to section 36-336.

2. A voluntary acknowledgment of paternity pursuant to section 25-812.

3. For a person who has undergone a sex change operation or has a chromosomal count that establishes the sex of the person as different than in the registered birth certificate, both of the following:

(a) A written request for an amended birth certificate from the person or, if the person is a child, from the child's parent or legal guardian.

(b) A written statement by a physician that verifies the sex change operation or chromosomal count.

4. A court order ordering an amendment to a birth certificate.

B. The state registrar shall change the name of the father on a registered birth certificate if:

1. The state registrar receives an administrative order or a court order ordering the state registrar to change the father's name on the registered birth certificate.

2. Paternity is established through a voluntary acknowledgement of paternity pursuant to section 25-812.

C. If a registered birth certificate does not exist for a person born in this state who is requesting to amend a birth certificate the person making that request shall comply with the requirements established by rule.

D. The state registrar shall retain the information on a person's registered birth certificate after the person's adoption if all of the following documents are submitted to the state registrar:

1. A written request to retain the information signed by the adoptive parent or a court order containing a request to retain the information on the registered birth certificate.

2. A written statement agreeing to retain the mother's name on the person's registered birth certificate, signed by the mother, or if the mother is deceased, a certified copy of a registered death certificate for the mother.

3. If there is a father's name stated on the registered birth certificate, a written statement agreeing to retain the father's name on the person's registered birth certificate, signed by the father, or if the father is deceased, a certified copy of a registered death certificate for the father.

E. If the state registrar amends a registered birth certificate following adoption, the birth certificate shall state the city or county of birth stated on the existing registered birth certificate and the date of birth stated on the existing registered birth certificate. The state registrar may omit the exact location of birth on the registered birth certificate.

F. If a local registrar or deputy local registrar amends a registered birth certificate, the local registrar or deputy local registrar shall forward all evidentiary documents provided to create the new birth certificate to the state registrar.

G. If the state registrar amends a registered birth certificate, the state registrar shall seal the previously registered birth certificate and the evidentiary documents provided to amend the registered birth certificate. The state registrar shall provide access to a sealed certificate or evidentiary documents only pursuant to section 36-322 or 36-340 or a court order issued in this state or as prescribed by rule.

H. If the state registrar receives a court order annulling an adoption, the state registrar shall unseal the sealed registered birth certificate and shall seal the new birth certificate and evidentiary documents.

36-338. Certificates of foreign birth for adoptees

A. The state registrar shall create and register a state of Arizona certificate of foreign birth for an adopted person who satisfies all of the following:

1. Was born in a foreign country.

2. Is not a United States citizen.

3. Has gone through a completed adoption process in a foreign country before coming to the United States.

4. Has an IR-3 stamped passport.

B. Before the state registrar creates and registers a certificate of foreign birth, either a state court, an adoptive parent or an adult adopted person must submit the following:

1. An adoption decree or other official document finalizing the adoption from the country of the adopted person's birth that has been translated into English.

2. A copy of the passport page showing the IR-3 stamp.

C. Before the state registrar creates and registers a certificate of foreign birth for a parent of an adopted child who has been issued an IR-3 visa and who has completed a readoption process in a court in this state, the parent must provide either of the following:

1. An original state of Arizona certificate of adoption issued by a court in this state.

2. A certified court order of adoption issued by a court in this state and either a birth certificate from the country of the adopted person's birth that has been translated into English or any other written documentation that establishes the date and place of the adopted person's birth and that has been translated into English.

D. If the adopted person does not have an IR-3 stamped passport, before the state registrar creates and registers a certificate pursuant to this section an adoptive parent or an adult adopted person must submit either:

1. An original state of Arizona certificate of adoption issued by a court in this state.

2. A certified court order of adoption issued by a court in this state and either a birth certificate from the country of the adopted person's birth that has been translated into English or any other written documentation that establishes the date and place of the adopted person's birth and that has been translated into English.

3. If the person was not adopted in this state, a court order issued in this state that recognizes the adoption pursuant to section 36-336.

E. The state registrar shall not create and register a state of Arizona certificate of foreign birth for an adopted person who was born in a foreign country and who was a United States citizen at the time of birth. The state registrar shall inform the adoptive parents or the adult adopted person that a birth certificate may be obtained through the United States department of state.

F. A state of Arizona certificate of foreign birth for an adopted person must show the country of birth and state that the certificate is not evidence of United States citizenship for the person for whom it is issued.

36-339. Missing children; notification; flagging birth certificate records; definitions

A. If a child is reported missing to a law enforcement agency in this state, that agency shall notify the state registrar in the state of the child's birth. The notification shall include the missing child's name, date of birth and county of birth.

B. If the state registrar is notified pursuant to subsection A that a child born in this state is missing, the state registrar shall flag the child's registered birth certificate. If the missing child is found, the law enforcement agency that reported the child missing shall notify the state registrar and the state registrar shall remove the flag from the child's registered birth certificate.

C. If the state registrar receives a request for a registered certificate that is flagged, the state registrar shall:

1. Make a photocopy of the photo identification of the person making the request.

2. Document the physical description of the person making the request.

3. Immediately notify a law enforcement agency in this state of the request.

D. For the purposes of this section:

1. "Flag" means to indicate on a child's registered birth certificate that the child is a missing child.

2. "Missing child" means a child whose location cannot be determined and who is reported to a law enforcement agency as abducted, lost or a runaway.

36-340. Adopted individual; sealed original birth certificate; contact preference and medical history forms; confidentiality

A. From and after December 31, 2021 and except as provided in subsection I of this section, the state registrar shall provide to an individual a copy of the individual's original birth certificate that has been sealed due to an adoption and any evidence of the adoption that is held with the original birth certificate, if all of the following are true:

1. The individual is at least eighteen years of age.

2. The individual was born in this state.

3. The individual submits to the state registrar a written request to receive a copy of the original birth certificate.

B. The copy of the original birth certificate shall clearly indicate that it is not a certified copy and that it may not be used for legal purposes.

C. The fees and procedures that apply to obtaining a copy of a registered certificate apply to obtaining a copy of an original birth certificate pursuant to this section.

D. The state registrar shall develop a contact preference form to be filled out by a birth parent, at the birth parent's option, and kept with the original birth certificate as provided in this section. The preference form shall do all of the following:

1. Indicate if the birth parent wants to do any of the following:

(a) Be contacted by the individual who receives the copy of the original birth certificate. If the birth parent wants to be contacted, the birth parent shall include the birth parent's current name, address and telephone number in addition to any other contact information the birth parent wishes to include.

(b) Be contacted only through an intermediary. If the birth parent wants to be contacted through an intermediary, the birth parent shall include the intermediary's name and telephone number.

(c) Not be contacted. The form shall indicate that the birth parent may change the contact preference to allow direct contact or contact through an intermediary by filing an amended contact preference form.

2. Indicate if the birth parent has completed and filed with the state registrar a medical history form.

3. Include the following information:

(a) The name of the child on the original birth certificate.

(b) The date of birth and sex of the child.

(c) The city or town, county and name of the hospital in which the child was born.

(d) The mother's name as shown on the original birth certificate.

(e) The name of the attorney or agency that placed the child for adoption or that the department placed the child for adoption.

(f) Whether the person filling out the form is the birth mother or birth father of the child.

E. The state registrar shall develop a medical history form to be completed by a birth parent at the birth parent's option.

F. The contact preference form and the medical history form are confidential. If the birth parent files the forms, the state registrar shall seal the forms together and retain them with the original birth certificate. The forms shall be given to the individual who receives the original birth certificate. The state registrar may not keep a copy of the contact preference form or the medical history form.

G. A birth parent may file an amended contact preference form or medical history form with the state registrar.

H. The department shall publicize the requirements of this section.

I. The birth parent may file an amended contact preference form pursuant to subsection D, paragraph 1, subdivision (c) of this section or update the information on the contact preference form by providing the state registrar the amended contact preference form or the new information electronically, in writing or in person.

J. The state registrar may not provide to an individual a copy of the individual's original birth certificate that has been sealed due to an adoption, if the individual was born from and after June 20, 1968 and before September 29, 2021.

36-341. Fees received by state and local registrars

A. The director of the department shall establish the fees to be charged for searches, copies of registered certificates, certified copies of registered certificates, amending registered certificates and correcting certificates that are processed by the department. The director may establish a surcharge to be assessed on any local registrar who obtains access to the department's vital records

automation system. A local registrar may establish the local registrar's own fees to be charged for searches, copies of registered certificates, certified copies of registered certificates, amending registered certificates and correcting certificates as determined necessary by the local entity.

B. In addition to fees collected pursuant to subsection A of this section, the state registrar shall assess an additional one dollar surcharge on fees for all certified copies of registered birth certificates. The state registrar shall deposit, pursuant to sections 35-146 and 35-147, all monies received from the surcharge in the confidential intermediary and fiduciary fund established by section 8-135.

C. The state registrar shall keep a true and accurate account of all fees collected by the state registrar under this chapter and shall deposit, pursuant to sections 35-146 and 35-147:

1. Eighty-five per cent of the first four million dollars collected each fiscal year in the vital records electronic systems fund established by section 36-341.01 and the remaining fifteen per cent of the first four million dollars collected each fiscal year in the state general fund.

2. Forty per cent of the amount collected in excess of four million dollars each fiscal year in the vital records electronic systems fund established by section 36-341.01 and the remaining sixty per cent in the state general fund.

D. A local registrar shall keep a true and accurate account of all fees collected by the local registrar under this chapter and shall deposit them with the county treasurer to be credited to a special registration and statistical revenue account of the health department fund.

E. In addition to fees collected pursuant to subsection A of this section, the department shall assess an additional one dollar surcharge on fees for all certified copies of registered death certificates. The department shall deposit, pursuant to sections 35-146 and 35-147, monies received from the surcharge in the child fatality review fund established by section 36-3504.

F. The state and local registrars may exempt an agency as defined in section 41-1001 from any fee required by this section, section 8-135 or section 36-3504.

36-342. Disclosure of information; prohibition

A. The state registrar may provide information contained in vital records to persons, including federal, state, local and other agencies, as required by law and for statistical or research purposes.

B. Except as authorized by law, a local registrar, a deputy local registrar or the state registrar or their employees shall not:

1. Permit inspection of a vital record or evidentiary document supporting the vital record.

2. Disclose information contained in a vital record.

3. Transcribe or issue a copy of all or part of a vital record.

36-343. Duty to provide information to the state registrar

A person who has knowledge of information relating to a birth, death or fetal death must provide this information to the state registrar on request.

TITLE 9. HEALTH SERVICES

CHAPTER 19. DEPARTMENT OF HEALTH SERVICES - VITAL RECORDS AND STATISTICS

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CHAPTER 19. DEPARTMENT OF HEALTH SERVICES - VITAL RECORDS AND STATISTICS

ARTICLE 1. ADMINISTRATION

R9-19-101. Definitions

In addition to the definitions in A.R.S. § 36-301, the following definitions apply in this Chapter unless otherwise stated:

1. "Administrator" means an individual designated by the governing authority of a health care institution to have the authority and responsibility for managing the health care institution.
2. "Affidavit" means a document that is signed by an individual:
   a. Who attests to the validity of the facts on the document, and
   b. Whose signature is notarized.
3. "Anatomical gift" has the same meaning as in A.R.S. § 36-841.
4. "Birth record" means the information specified in R9-19-201 that is maintained by the Department:
   a. As a written registered certificate, or
   b. In a database.
5. "Congenital anomaly" means an abnormality of body structure, function, or chemistry, or of chromosomal structure or composition that is present at or before birth.
6. "Custody" has the same meaning as "legal decision-making" in A.R.S. § 25-401.
7. "Death record" means the information specified in R9-19-302 that is maintained by the Department:
   a. As a written registered certificate, or
   b. In a database.
8. "Delivery" means the complete expulsion or extraction of a product of human conception from its mother.
9. "Document" or "documented" means in written, photographic, electronic, or other permanent form.
10. "Electronic signature" has the same meaning as in A.R.S. § 44-7002.
11. "Facility" has the same meaning as "facilities" in A.R.S. § 36-401.
12. "Fetal death record" means the information specified in R9-19-305(B) that is maintained by the Department:
    a. As a written registered certificate, or
    b. In a database.
13. "Funeral director" has the same meaning as in A.R.S. § 32-1301.
14. "Guardian" has the same meaning as in A.R.S. § 14-10103.
15. "Health professional license number" means a standard unique identifier for a health care provider assigned by the state governmental agency that regulates the health care provider.
16. "Hospice inpatient facility" has the same meaning as in A.A.C. R9-10-101.
17. "Hospital" has the same meaning as in A.A.C. R9-10-101.
18. "Independent source" means a person who is not:
    a. The individual submitting an evidentiary document; or
    b. Related by consanguinity, adoption, or marriage to the individual submitting an evidentiary document.
19. "Injury" means damage to a human body caused by an external source as determined by a medical examiner or tribal law enforcement authority.
20. "Inpatient" means an individual who is receiving services in a facility as an inpatient, as determined by the facility.
21. "Medical certifier" means a health care provider, medical examiner, or tribal law enforcement authority authorized to sign a medical certification of death as prescribed in A.R.S. § 36-325.
22. "Medical record" has the same meaning as "medical records" in A.R.S. § 12-2291.
23. "Medical record number" means a standard unique identifier, assigned by a licensed health care institution or a health care provider, for documentation concerning the diagnosis or treatment of a patient.
24. "National Provider Identifier" means a standard unique number for a health care provider assigned by the Centers for Medicare and Medicaid Services.
25. "Nursing care institution" has the same meaning as in A.R.S. § 36-401.
26. "Organ procurement organization" has the same meaning as in A.R.S. § 36-841.
27. "Outpatient" means an individual who is receiving services from a facility but is not an inpatient as determined by the facility.
28. "Part" has the same meaning as in A.R.S. § 36-841.
29. "Passport" means an official document issued by the government of a specific country that confirms the identity and citizenship of an individual and allows the individual to travel to and from the specific country.
30. "Person" has the same meaning as in A.R.S. § 1-215 and includes a governmental agency.
31. "Personal knowledge" means having observed an individual's mother:
    a. In an apparent pregnant state within two months before the individual's date of birth and in a non-pregnant state after the individual's date of birth, or
    b. Giving birth to the individual.
32. "Plurality" means the number of fetuses carried in a mother's womb during a pregnancy.
33. "Registered nurse practitioner" has the same meaning as "nurse practitioner" in A.R.S. § 32-1601.
34. "Residence" means an address or location at which an individual lives.
35. "Signature" means:
    a. The first and last name of an individual written with his or her own hand as a form of identification or authorization;
    b. An electronic signature; or

c. A mark or symbol made by an individual, representing the individual's identification or authorization, and, if not notarized, the first and last name of another individual, written with his or her own hand, who witnessed the individual make the mark or symbol.

36. "State file number" means the official state number that is assigned to a vital record by the State Registrar or a local registrar or deputy local registrar when registering a birth, death, or fetal death.
37. "Transfer" has the same meaning as in A.A.C. R9-10-101.
38. "Transportation" means the use of an animal or vehicle for conveyance or travel from one place to another.
39. "Tribal community" means a tract of land held by an Indian tribe recognized by the Federal Bureau of Indian Affair's Office of Federal Acknowledgement under 25 CFR Part 83.
40. "WIC" means a federally funded program established by the Child Nutrition Act of 1966 that provides eligible women, infants, and children with food, nutrition education, breastfeeding support, and referrals.

Historical Note

Former Section R9-19-101 repealed, new Section R9-19-101 renumbered from R9-19-102 and amended effective July 31, 1989 (Supp. 89-3). Amended effective February 12, 1996 (Supp. 96-1). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (Supp. 05-1). New Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Amended by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2). Typographical error of transposed A.R.S. citation numbers corrected at subsection 20 at the request of the Department of Health Services on September 27, 2016; Office file number R16-223 (Supp. 16-3). Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-102. Evidentiary Documents

A person submitting an evidentiary document to support the creation, correction, or amendment of a vital record for an individual or to request a copy of a certificate issued under this Chapter shall ensure that:

1. The evidentiary document:
   a. Is documentation of a transaction, occurrence, billing, or legal relationship;
   b. Contains the date the evidentiary document was created;
   c. Is one of the following:
      i. An original document;
      ii. A copy of a document, certified by the issuing entity;
      iii. A copy of the individual's medical record;
      iv. If applicable, a copy of the individual's mother's medical record;
      v. A record or document, accompanied by a written statement signed by the custodian of the record or document, attesting to the validity of the record or document;
      vi. A document submitted by an independent source directly to the State Registrar or, if applicable, a local registrar;
      vii. A document in a sealed envelope provided by an independent source;
      viii. A copy of a published document, such as a newspaper, a magazine, or a book; or
      ix. A copy of a governmental agency document; and
   d. Is from a different independent source than any other evidentiary document submitted to support the creation, correction, or amendment of the vital record or the request for the copy of a certificate issued under this Chapter; and
2. If the evidentiary document is in a language other than English, the evidentiary document is accompanied by:
   a. An English translation of the evidentiary document; and
   b. A written statement signed by the translator, attesting that the translator is competent to translate the evidentiary document and that the English translation is an accurate and complete translation of the evidentiary document.

Historical Note

Amended effective February 20, 1980 (Supp. 80-1). Former Section R9-19-102 renumbered to R9-19-101, new Section R9-19-102 renumbered from R9-19-106 and amended effective July 31, 1989 (Supp. 89-3). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (Supp. 05-1). New Section R9-19-102 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-103. Review Process

A. The State Registrar or a local registrar or deputy local registrar shall review for compliance with requirements in A.R.S. Title 36, Chapter 3 and this Chapter the information, evidentiary documents, and, if applicable, fee submitted for:
1. Registering a birth, death, or fetal death;
2. Correcting or amending a registered birth record, death record, or fetal death record;
3. Obtaining a disposition-transit permit;
4. Obtaining a disinterment-reinterment permit; or
5. Obtaining a copy of a certificate issued under this Chapter.

B. If the State Registrar or a local registrar or deputy local registrar determines that the information, evidentiary documents, and, if applicable, fee submitted for a purpose specified in subsections (A)(1) through (5) are in compliance with requirements in A.R.S. Title 36, Chapter 3 and this Chapter, the State Registrar, local registrar, or deputy local registrar shall, as applicable:
1. Register the birth, death, or fetal death;

2. Correct or amend the registered birth record, death record, or fetal death record;
3. Issue the disposition-transit permit;
4. Issue the disinterment-reinterment permit; or
5. Issue the copy of a certificate.

C. If the State Registrar or a local registrar or deputy local registrar determines that information, an evidentiary document, or, if applicable, a fee submitted for a purpose specified in subsections (A)(1) through (5):
1. Is incomplete, illegible, or inconsistent with other information or evidentiary documents submitted, the State Registrar, local registrar, or deputy local registrar may request in writing the missing information or clarification of the required information;
2. Is not in compliance with requirements in A.R.S. Title 36, Chapter 3 and this Chapter, the State Registrar, local registrar, or deputy local registrar may, in writing, state how the submitted information, evidentiary document, or, if applicable, fee is not in compliance and:
   a. Request additional information, evidentiary documents, or fee required in A.R.S. Title 36, Chapter 3 or this Chapter; or
   b. Provide information to a person submitting the information on what is necessary for compliance; or
3. May not be valid or accurate, the State Registrar, local registrar, or deputy local registrar may request in writing an evidentiary document, as determined by the State Registrar, local registrar, or deputy local registrar, to validate the information.

D. If the requested information, clarification, evidentiary document, or fee specified in subsection (C) is not submitted within the applicable time period specified in this Chapter, the State Registrar, local registrar, or deputy local registrar shall determine whether the information, evidentiary documents, and, if applicable, fee that had been submitted support the purpose specified in subsections (A)(1) through (5).

E. If the State Registrar or a local registrar or deputy local registrar determines that information, evidentiary documents, and, if applicable, fee submitted for a purpose specified in subsections (A)(1) through (5):
1. Supports the requested action, the State Registrar or a local registrar or deputy local registrar shall, as applicable:
   a. Register the birth, death, or fetal death;
   b. Correct or amend the registered birth record, death record, or fetal death record; or
   c. Issue the disposition-transit permit, disinterment-reinterment permit, or copy of the certificate; or
2. Does not support the requested action, the State Registrar or a local registrar or deputy local registrar:
   a. Shall not register the birth, death, or fetal death or correct or amend the registered birth record, death record, or fetal death record;
   b. Shall not issue the disposition-transit permit, disinterment-reinterment permit, or copy of the certificate; and
   c. If not registering the birth, death, or fetal death; correcting or amending the registered birth record, death record, or fetal death record; or issuing the disposition-transit permit, disinterment-reinterment permit, or copy of the certificate, shall provide written notice to the person who submitted the request that includes:
      i. The reasons for not registering the birth, death, or fetal death; correcting or amending the registered birth record, death record, or fetal death record; or issuing the disposition-transit permit, disinterment-reinterment permit, or copy of the certificate; and
      ii. Except as provided in R9-19-308(D) or R9-19-312(C), as applicable, the right to appeal the State Registrar's determination as prescribed in A.R.S. Title 41, Chapter 6, Article 6.

Historical Note

Amended effective February 20, 1980 (Supp. 80-1). Former Section R9-19-103 repealed, new Section R9-19-103 renumbered from R9-19-107 and amended effective July 31, 1989 (Supp. 89-3). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (Supp. 05-1). New Section R9-19-103 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-104. Duties of Local Registrars

A. A local registrar shall:
1. Only use paper approved by the Department when issuing:
   a. A certified copy of an individual's certificate of birth registration according to R9-19-211,
   b. A certified copy of a deceased individual's certificate of death registration according to R9-19-315,
   c. A certified copy of a certificate of fetal death registration according to R9-19-317, or
   d. A certified copy of a certificate of birth resulting in stillbirth according to R9-19-317; and
2. Ensure that, before a document in subsection (A)(1)(a) through (d) is issued, the document contains:
   a. The state seal,
   b. The signature of the State Registrar or an individual designated by the State Registrar, and
   c. The raised seal of local registrar's registration district.

B. Except as directed by the State Registrar, a local registrar shall use the electronic data systems provided by the Department for all functions designated by the State Registrar or this Chapter to be performed by the local registrar.

Historical Note

Amended effective February 20, 1980 (Supp. 80-1). Former Section R9-19-104 repealed, new Section R9-19-104 renumbered from R9-19-109 and amended effective July 31, 1989 (Supp. 89-3). Amended by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-105. Fee Schedule

A. When a fee is specified in this Chapter, the following fees apply:
1. For a noncertified copy of a certificate, $5.00;
2. For a certified copy of a:
   a. Certificate of birth registration, $19.00;
   b. Certificate of delayed birth registration, $19.00;
   c. Certificate of death registration, $19.00;
   d. Certificate of delayed death registration, $19.00;
   e. Certificate of fetal death registration, $19.00;
   f. Certificate of birth resulting in stillbirth, $19.00;
   g. Certificate of delayed fetal death registration, $19.00; or
   h. Certificate of no record, $19.00;
3. For a search to verify birth or death data for statistical or research purposes according to A.R.S. § 36-342(A), $5.00;
4. For a request to establish a:
   a. Delayed birth record for an individual and register the individual's birth, $19.00;
   b. Registered record of foreign birth for an adopted individual, $19.00;
   c. Delayed death record for a deceased individual and register the deceased individual's death, $19.00;
   d. Delayed fetal death record for a fetal death and register the fetal death, $19.00; or
   e. Death record or delayed death record for a presumptive death under A.R.S. § 36-325 or 36-328, $19.00; and
5. For a request to amend or correct information in a:
   a. Registered birth record, $29.00;
   b. Registered death record, $29.00; or
   c. Registered fetal death record, $29.00.

B. If a request submitted and fee paid, as prescribed in subsection (A)(4) or (5), results in the registration of a birth, death, or fetal death or a correction or amendment to a registered birth record, registered death record, or registered fetal death record, the Department shall provide to the person submitting the request and paying the fee a certified copy of the applicable certificate for the registered, corrected, or amended record.

C. Except as provided in subsection (E), the Department shall not charge an agency, as defined in A.R.S. § 41-1001, any fee in this Section.

D. In addition to the fees charged in subsection (A), the Department shall assess the following surcharges:
1. As required in A.R.S. § 36-341(B), for a certified copy of a certificate of birth registration or certificate of delayed birth registration, $1.00; and
2. As required in A.R.S. § 36-341(E), for a certified copy of a certificate of death registration, certificate of delayed death registration, certificate of fetal death registration, or certificate of delayed fetal death registration, $1.00;

E. A local registrar shall pay the following surcharges to the Department for copies issued by the local registrar:
1. As required in A.R.S. § 36-341(B), for a certified copy of a certificate of birth registration or certificate of delayed birth registration, $1.00;
2. As required in A.R.S. § 36-341(E), for a certified copy of a certificate of death registration, certificate of delayed death registration, certificate of fetal death registration, or certificate of delayed fetal death registration, $1.00;
3. For system access for each certified copy of a certificate; $4.00; and
4. For system access for each noncertified copy of a certificate, $1.00.

Historical Note

Amended effective February 20, 1980 (Supp. 80-1). Former Section R9-19-105 repealed, new Section R9-19-105 renumbered from R9-19-111 and amended effective July 31, 1989 (Supp. 89-3). Section R9-19-105 repealed; new Section R9-19-105 renumbered from R9-19-413 and amended by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

ARTICLE 2. VITAL RECORDS FOR BIRTH

R9-19-201. Information for a Birth Record

A. Except as provided in subsection (B) or R9-19-204(F) or (I), the information submitted for an individual's birth record includes the following:
1. Information for the individual's certificate of birth registration provided by the individual's mother or, if applicable, the individual's father or another family member who is of legal age:
   a. The individual's name;
   b. The following information about the individual's mother:
      i. Name before first marriage;
      ii. Date of birth;
      iii. State, territory, or foreign country where the individual's mother was born; and
      iv. Street address, apartment number if applicable, city or town, state, zip code, and county of the individual's mother's residence; and
   c. If applicable according to A.R.S. § 36-334, the following information about the individual's father:

i. Name;
ii. Date of birth; and
iii. State, territory, or foreign country where the father was born;

2. Other information for the individual's birth record provided by the individual's mother or, if applicable, the individual's father or another family member who is of legal age:
   a. The individual's mother's:
      i. Current last name,
      ii. Social Security Number,
      iii. Race,
      iv. Height, and
      v. Pre-pregnancy weight;
   b. Whether the individual's mother:
      i. Is of Hispanic origin and, if so, the type of Hispanic origin;
      ii. Received food from WIC for herself during the pregnancy;
      iii. Was ever married; or
      iv. Was married at any time in the ten months immediately preceding the individual's birth;
   c. Whether the individual's mother's residence is:
      i. Inside a city's limits, or
      ii. In a tribal community;
   d. The following information about the individual's mother:
      i. The highest degree or level of education completed by the individual's mother at the time of the individual's birth;
      ii. If the individual's mother's mailing address is different from the address in subsection (A)(1)(b)(iv), the individual's mother's mailing address; and
      iii. Date the last normal menses began;
   e. The individual's mother's history of:
      i. Smoking before or during the pregnancy,
      ii. Prenatal care for this pregnancy, and
      iii. Previous pregnancies and pregnancy outcomes;
   f. If applicable according to A.R.S. § 36-334, the following information about the individual's father:
      i. Social Security Number;
      ii. Race;
      iii. Whether the father is of Hispanic origin and, if so, the type of Hispanic origin; and
      iv. Highest degree or level of education completed by the father at the time of the individual's birth;
   g. If the birth occurred at a residence and was not attended by a physician, registered nurse practitioner, nurse midwife, or midwife who is willing and able to request the registration of the individual's birth, the name of the person who assisted the birth and the person's relationship to the individual's mother; and
   h. Whether a Social Security number has been requested for the individual;
3. Information for the individual's certificate of birth registration provided by the hospital where the individual was born or, if the individual was not born in a hospital, by the physician, registered nurse practitioner, nurse midwife, or midwife who attended the birth and is willing and able to provide the information:
   a. The individual's sex;
   b. The individual's date and time of birth;
   c. The individual's plurality of delivery;
   d. If the plurality of delivery involves more than one, the individual's order of birth;
   e. If the individual was born in a hospital:
      i. The name, type, and, if applicable, National Provider Identifier of the hospital where the birth occurred; and
      ii. The city or town and county where the hospital is located;
   f. If the birth occurred at a residence and was attended by a physician, registered nurse practitioner, nurse midwife, or midwife who is willing and able to provide the information:
      i. The street address, city or town, and county where the residence is located; and
      ii. Whether the birth was planned to occur at the residence; and
   g. If the birth occurred at a facility other than a hospital or residence and was attended by a physician, registered nurse practitioner, nurse midwife, or midwife who is willing and able to provide the information:
      i. The name, type, and, if applicable, National Provider Identifier of the facility where the birth occurred; and
      ii. The city or town and county where the facility is located; and
4. Other information for the individual's birth record provided by the hospital where the individual was born or, if the individual was not born in a hospital, by the physician, registered nurse practitioner, nurse midwife, or midwife who attended the birth and is willing and able to provide the information:
   a. The principal source of payment for the individual's birth;
   b. The name of the person who assisted the individual's birth and the person's health care provider license type;
   c. If the person specified according to subsection (A)(4)(b):
      i. Has a National Provider Identifier, the person's National Provider Identifier; or

ii. Does not have a National Provider Identifier, the person's health professional license number;

d. The individual's mother's medical record number, assigned by the hospital, physician, registered nurse practitioner, nurse midwife, or midwife to document the diagnosis or treatment of the individual's mother;

e. If the individual's mother was not married at the time of the birth or at any time during the ten months preceding the birth, whether a voluntary acknowledgement of paternity was completed by the individual's father;

f. The individual's mother's:

i. Weight at the time of delivery, and

ii. History of cesarean deliveries;

g. The following information about the individual's mother:

i. Medical risk factors during this pregnancy,

ii. Characteristics of the labor and delivery, and

iii. Medical complications during labor or delivery;

h. Whether the individual's mother was transferred from a residence or other facility to another facility for a maternal medical condition or fetal medical condition before the birth;

i. If the individual's mother was transferred from one facility to another facility before the birth, the name or location of the facility from which the individual's mother was transferred;

j. The following information about the individual:

i. The fetal presentation at delivery;

ii. The individual's birth weight and length;

iii. An estimate of gestation by the person who performed the delivery;

iv. Characteristics of the individual's medical condition after delivery;

v. Whether the individual has any congenital anomalies and, if so, the type of congenital anomalies; and

vi. Information about immunizations received by the individual after delivery;

k. Whether the individual was transferred within 24 hours after the individual's delivery;

l. If the individual was transferred within 24 hours after the individual's delivery, the name of the facility to which the individual was transferred;

m. Whether the individual was alive at the time the information in this subsection was submitted; and

n. Whether the individual was being breastfed at the time the information in this subsection was submitted.

B. If the birth of an individual did not occur in a hospital and was either not attended by a physician, registered nurse practitioner, nurse midwife, or midwife, or was attended by a physician, registered nurse practitioner, nurse midwife, or midwife who is not willing or not able to provide the information specified in subsections (A)(3) and (4), the information submitted for an individual's birth record includes the following:

1. Information for the individual's certificate of birth registration that includes:

a. The information in subsection (A)(1);

b. The information in subsections (A)(3)(a) through (d);

c. Whether the birth occurred at a residence and, if so, whether the birth was planned to occur at the residence;

d. If the birth did not occur at a residence, a description of where the birth occurred; and

e. The street address, city or town, and county where the birth occurred; and

2. Other information for the individual's birth record that includes:

a. The information in subsection (A)(2);

b. The information in subsections (A)(4)(e) through (g), (j)(i) and (ii), and (k) through (n);

c. The name of the person who assisted the individual's birth and the person's relationship to the individual's mother; and

d. Whether the individual's mother's temperature was 38° C or higher during labor.

Historical Note

Amended effective July 31, 1989 (Supp. 89-3). Section R9-19-201 repealed; new Section R9-19-201 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-202. Requests from Hospitals for Birth Registration

A. Before requesting the registration of the birth of an individual born in a hospital, the administrator or person in charge of the medical records for the hospital where the individual was born shall obtain, in a written format:

1. The information in R9-19-201(A); and

2. A statement attesting to the validity of the information in:

a. R9-19-201(A)(1) and (2), signed and dated by the person providing the information; and

b. R9-19-201(A)(3) and (4), signed and dated by the person providing the information.

B. To request the registration of the birth of an individual born in a hospital, within seven days after the date of the individual's birth, the administrator or person in charge of the medical records for the hospital where the individual was born shall:

1. Enter into the state electronic birth registration system the information in R9-19-201(A); and

2. If applicable, submit to the State Registrar or a local registrar or deputy local registrar the documentation in subsection (E) or (F).

C. To request the registration of the birth of an individual born in a hospital, more than seven days but less than one year after the individual's birth, the administrator or person in charge of the medical records for the hospital where the individual was born shall submit, in a Department-provided format, to the State Registrar or a local registrar or deputy local registrar:
1. The information required in R9-19-201(A);
2. If the information required in R9-19-201(A) is not submitted electronically, a written statement attesting to the validity of the submitted information, signed and dated by the administrator or person in charge of the medical records; and
3. If applicable, the documentation in subsection (E) or (F).

D. If an individual was born in a hospital and the individual's birth has not been registered more than one year after the individual's birth, the administrator or person in charge of the medical records for the hospital where the individual was born may submit to the State Registrar to request the registration of the individual's birth:
1. The information required in R9-19-201(A);
2. If applicable, the documentation in subsection (E) or (F);
3. A copy of supportive medical records; and
4. A written statement attesting to the validity of the submitted information, signed and dated by the administrator or person in charge of the hospital's medical records.

E. If the name of an individual's mother in R9-19-201(A)(1)(b)(i) is based on a court order establishing maternity, the person submitting the information for a birth record shall submit a copy of the court order establishing maternity, certified by the issuing entity.

F. If the name of an individual's father in R9-19-201(A)(1)(c)(i) is based on:
1. A voluntary acknowledgement of paternity, the person submitting the information for a birth record shall submit a copy of the voluntary acknowledgement of paternity that meets the requirements in A.R.S. § 25-812; or
2. An administrative order or a court order establishing paternity, the person submitting the information for a birth record shall submit a copy of the administrative order or court order establishing paternity, certified by the issuing entity.

Historical Note

Amended effective July 31, 1989 (Supp. 89-3). Section R9-19-202 repealed; new Section R9-19-202 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-203. Requests for Birth Registration from Physicians, Registered Nurse Practitioners, Nurse Midwives, or Midwives

A. Before requesting the registration of the birth of an individual not born in a hospital whose birth was attended by a physician, registered nurse practitioner, nurse midwife, or midwife, the physician, registered nurse practitioner, nurse midwife, or midwife who attended the birth and is willing and able to request the registration of the individual's birth shall:
1. Obtain, in a written format:
   a. The information in R9-19-201(A)(1) and (2); and
   b. A statement attesting to the validity of the information in R9-19-201(A)(1) and (2), signed and dated by the person providing the information;
2. Provide, in a Department-provided format, the information in R9-19-201(A)(3) and (4); and
3. Sign and date a written statement attesting to the validity of the information in R9-19-201(A)(3) and (4).

B. A physician, registered nurse practitioner, nurse midwife, or midwife who attended an individual's birth and is willing and able to request the registration of the individual's birth shall:
1. Maintain a copy of the document in subsection (A) for at least 10 years after the date of the individual's birth; and
2. Provide a copy of the document in subsection (A) to the State Registrar for review within two business days after the time of the State Registrar's request, where a business day is a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday or a statewide furlough day.

C. To request the registration of the birth of an individual not born in a hospital whose birth was attended by a physician, registered nurse practitioner, nurse midwife, or midwife, within seven days after the date of the individual's birth, if the physician, registered nurse practitioner, nurse midwife, or midwife is willing and able to, the physician, registered nurse practitioner, nurse midwife, or midwife shall:
1. Either:
   a. Enter into the state electronic birth registration system the information required in R9-19-201(A), or
   b. Submit a copy of the document in subsection (A) to the State Registrar or a local registrar or deputy local registrar; and
2. If applicable, submit to the State Registrar or a local registrar or deputy local registrar the document required in subsection (E) or (F).

D. To request the registration of the birth of an individual not born in a hospital whose birth was attended by a physician, registered nurse practitioner, nurse midwife, or midwife, more than seven days but less than one year after the individual's birth, if the physician, registered nurse practitioner, nurse midwife, or midwife is willing and able to, the physician, registered nurse practitioner, nurse midwife, or midwife shall submit, in a Department-provided format, to the State Registrar or a local registrar or deputy local registrar:
1. The information required in R9-19-201(A);
2. A copy of the medical records related to the individual's birth;
3. If applicable, the document required in subsection (E) or (F); and

4. A written statement, signed and dated by the physician, registered nurse practitioner, nurse midwife, or midwife, attesting, to the best of the knowledge of the physician, registered nurse practitioner, nurse midwife, or midwife, that the submitted information and documents are valid.

E. If the name of an individual's mother in R9-19-201(A)(1)(b)(i) is based on a court order establishing maternity, the person submitting the information for a birth record shall submit a copy of the court order establishing maternity, certified by the issuing entity.

F. If the name of an individual's father in R9-19-201(A)(1)(c)(i) is based on:

1. A voluntary acknowledgement of paternity, the person submitting the information for a birth record shall submit a copy of the voluntary acknowledgement of paternity that meets the requirements in A.R.S. § 25-812; or
2. An administrative order or a court order establishing paternity, the person submitting the information for a birth record shall submit a copy of the administrative order or court order establishing paternity, certified by the issuing entity.

G. If the State Registrar or a local registrar or deputy local registrar determines that a request for registration of an individual's birth submitted according to subsection (C) or (D):

1. Contains the required information and, if applicable, evidentiary documents, the State Registrar, local registrar, or deputy local registrar shall establish a birth record for the individual and register the individual's birth; or
2. Does not contain the required information or applicable evidentiary documents, the State Registrar, a local registrar, or deputy local registrar shall:
   a. Not establish a birth record for the individual or register the individual's birth; and
   b. Provide written notification to the person who submitted the request, according to R9-19-103(C):
      i. Specifying the missing, incomplete, false, or invalid information or evidentiary documents; and
      ii. Informing the person that the person has:
         (1) For a request submitted according to subsection (C), until 30 days after the individual's birth to provide the required information; or
         (2) For a request submitted according to subsection (D), until one year after the individual's birth or 30 days after the date of the written notification in subsection (G)(2)(b), whichever is later, to provide the required information or evidentiary documents.

Historical Note

Former Section R9-19-203 repealed, new Section R9-19-203 renumbered from R9-19-204 and amended effective July 31, 1989 (Supp. 89-3). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (Supp. 05-1). New Section R9-19-203 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-204. Requests for Birth Registration from Persons Other than Hospitals or Health Care Providers

A. To request the registration of the birth of an individual not born in a hospital whose birth was either not attended by a physician, registered nurse practitioner, nurse midwife, or midwife, or was attended by a physician, registered nurse practitioner, nurse midwife, or midwife who is not willing or not able to comply with requirements in R9-19-203, within seven days after the date of the individual's birth, the individual's parent, guardian, or person who has custody of the individual shall submit the following to the State Registrar or a local registrar or deputy local registrar:

1. The information required in R9-19-201(B);
2. If the name of the individual's mother in R9-19-201(A)(1)(b)(i) is based on a court order establishing maternity, a copy of the court order establishing maternity, certified by the issuing entity;
3. If the name of the individual's father in R9-19-201(A)(1)(c)(i) is based on:
   a. A voluntary acknowledgement of paternity, a copy of the voluntary acknowledgement of paternity that meets the requirements in A.R.S. § 25-812; or
   b. An administrative order or a court order establishing paternity, a copy of the administrative order or court order establishing paternity, certified by the issuing entity;
4. A written statement attesting to the validity of the submitted information, signed and dated by the person submitting the request;
5. One evidentiary document establishing the individual's mother's presence in Arizona at the time of the individual's birth that:
   a. Contains the individual's mother's first and last name, the individual's mother's street address or the location where the individual's mother was present in Arizona, and the date the evidentiary document was created; and
   b. Was created no more than 30 days before the date of the individual's birth or seven days after the date of the individual's birth;
6. One evidentiary document supporting the facts of the individual's birth, such as:
   a. A copy of the part of the individual's mother's medical record showing services received by the individual's mother during:
      i. The three months before the individual's birth, or
      ii. After the individual's birth and before the submission of the request to register the individual's birth;
   b. A copy of the individual's medical record, if seen by a physician, registered nurse practitioner, nurse midwife, or midwife before the submission of the request to register the individual's birth;
   c. The laboratory results of a newborn screening test, conducted under A.R.S. § 36-694;
   d. An affidavit from an independent source, attesting to personal knowledge of the individual's birth;
   e. A certified blessing or baptismal certificate for the individual with either a raised seal of the church or accompanied by a written statement signed by the church minister or other church official; or

f. Another document from an independent source containing information that supports the facts of the individual's birth; and

7. If the request for registration of the individual's birth is submitted by:
   a. The individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; or
   b. A person who has custody of the individual, a copy of the court order establishing custody, certified by the issuing court.

B. To request the registration of the birth of an individual not born in a hospital whose birth was either not attended by a physician, registered nurse practitioner, nurse midwife, or midwife, or was attended by a physician, registered nurse practitioner, nurse midwife, or midwife who is not willing or not able to comply with requirements in R9-19-203, more than seven days but less than one year after the individual's birth, the individual's parent, guardian, or person who has custody of the individual shall submit the following to the State Registrar or a local registrar or deputy local registrar:

1. The information required in R9-19-201(B);
2. If the name of the individual's mother in R9-19-201(A)(1)(b)(i) is based on a court order establishing maternity, a copy of the court order establishing maternity, certified by the issuing entity;
3. If the name of the individual's father in R9-19-201(A)(1)(c)(i) is based on:
   a. A voluntary acknowledgement of paternity, a copy of the voluntary acknowledgement of paternity that meets the requirements in A.R.S. § 25-812; or
   b. An administrative order or a court order establishing paternity, a copy of the administrative order or court order establishing paternity, certified by the issuing entity.
4. A written statement attesting to the validity of the submitted information, signed and dated by the person submitting the request;
5. One evidentiary document establishing the individual's mother's presence in Arizona at the time of the individual's birth that:
   a. Contains the individual's mother's first and last name, the individual's mother's street address or the location where the individual's mother was present in Arizona, and the date the evidentiary document was created; and
   b. Was created no more than 30 days before the date of the individual's birth or no more than 30 days after the date of the individual's birth;
6. One evidentiary document supporting the facts of the individual's birth, such as:
   a. A copy of the part of the individual's mother's medical record showing services received by the individual's mother during the three months before or six weeks after the individual's birth;
   b. A copy of the individual's medical record, if seen by a physician, registered nurse practitioner, nurse midwife, or midwife less than six weeks after the individual's birth;
   c. The laboratory results of a newborn screening test, conducted under A.R.S. § 36-694;
   d. An affidavit from an independent source, attesting to personal knowledge of the individual's birth;
   e. A certified blessing or baptismal certificate for the individual with either a raised seal of the church or accompanied by a written statement signed by the church minister or other church official; or
   f. Another document from an independent source containing information that supports the facts of the individual's birth; and
7. If the request for registration of the individual's birth is submitted by:
   a. The individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; or
   b. A person who has custody of the individual, a copy of the court order establishing custody, certified by the issuing court.

C. If the State Registrar or a local registrar or deputy local registrar determines that a request for registration of an individual's birth submitted according to subsection (A) or (B) and the evidentiary documents submitted as part of the request:

1. Contain the required information, meet the requirements in subsection (A) or (B), as applicable, and are true and valid, the State Registrar, local registrar, or deputy local registrar shall establish a birth record for the individual and register the individual's birth; or
2. Do not contain the required information, do not meet the requirements in subsection (A) or (B), as applicable, or may not be true or valid, the State Registrar, local registrar, or deputy registrar shall:
   a. Not establish a birth record for the individual or register the individual's birth; and
   b. Provide written notification to the person who submitted the request according to R9-19-103(C):
      i. Specifying the missing, incomplete, false, or invalid information or evidentiary documents; and
      ii. Informing the person that the person has until one year after the individual's birth or 30 days after the date of the written notification in subsection (C)(2)(b), whichever is later, to provide the required information or evidentiary documents.

D. Except as provided in R9-19-202(D), a request for registration of an individual's birth, which occurred in Arizona, more than one year after the individual's birth, may be submitted by:

1. The individual, if the individual is of legal age or is married;
2. The individual's parent, if the individual is not of legal age and is not married;
3. The individual's guardian; or
4. A person who has custody of the individual.

E. Before a person in subsection (D) may request the registration of an individual's birth more than one year after the individual's birth, the person shall request a certified copy of the individual's certificate of birth registration, according to the requirements in R9-19-211, and receive a "Certificate of No Record."

F. Except as provided in subsection (I), to request the registration of an individual's birth, which occurred in Arizona, more than one year after the individual's birth, a person in subsection (D) shall submit to the State Registrar:

1. A "Certificate of No Record" for the individual issued by the State Registrar, dated not more than five years before the date the request in this subsection is submitted;

2. The following information, in a Department-provided format:
   a. Whether the individual has a registered birth record in another state or country;
   b. If the individual has a registered birth record in another state or country, the state or country that registered the individual's birth;
   c. The following information about the individual:
      i. Current name;
      ii. Name before first marriage;
      iii. Sex;
      iv. Date of birth;
      v. Town, city, or county where the individual's birth occurred; and
      vi. Race;
   d. The following information about the individual's mother:
      i. Name at the time of the individual's birth;
      ii. Name before first marriage;
      iii. Date of birth;
      iv. City or town, county, and state of the individual's mother's usual residence at the time of the individual's birth;
      v. State, territory, or foreign country where the individual's mother was born;
      vi. Social Security Number;
      vii. Race;
      viii. Whether the individual's mother is of Hispanic origin and, if so, the type of Hispanic origin;
      ix. Whether the individual's mother's usual residence at the time of the individual's birth was in a tribal community; and
      x. If the individual's mother's usual residence at the time of the individual's birth was in a tribal community, the name of the tribal community;
   e. If applicable according to A.R.S. § 36-334, the following information about the individual's father:
      i. Name;
      ii. Date of birth;
      iii. State, territory, or foreign country where the individual's father was born;
      iv. Social Security Number;
      v. Race; and
      vi. Whether the individual's father is of Hispanic origin and, if so, the type of Hispanic origin;
   f. If the individual is not of legal age and is not married, a written statement attesting to the validity of the information required in subsections (F)(2)(a) through (e), signed by:
      i. The individual's parent; or
      ii. If applicable, the individual's guardian or the person who has custody of the individual; and
   g. If the individual is of legal age or married, a written statement attesting to the validity of the information required in subsections (F)(2)(a) through (e), signed by:
      i. The individual; or
      ii. If applicable, the individual's guardian or the person who has custody of the individual;
3. If the information is submitted by:
   a. The individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; or
   b. A person who has custody of the individual, a copy of the court order establishing custody, certified by the issuing court;
4. The following documents:
   a. If the individual is 14 years of age or younger:
      i. Except as provided in subsection (F)(5)(a), an affidavit attesting to the facts of birth signed by the individual's father, the individual's mother, or other adult family member of the individual who has personal knowledge of the individual's birth;
      ii. At least one evidentiary document containing the facts of the individual's birth, established before the individual was five years of age; and
      iii. At least one evidentiary document establishing the individual's mother's presence in Arizona at the time of the individual's birth; or
   b. If the individual is over 14 years of age:
      i. Except as provided in subsection (F)(5)(b), an affidavit attesting to the facts of birth signed by the individual's father, the individual's mother, or other adult family member of the individual, who is at least ten years older than the individual and who has personal knowledge of the individual's birth;
      ii. At least one evidentiary document containing the facts of the individual's birth, established in the first ten years of the individual's life;
      iii. At least one evidentiary document containing the facts of the individual's birth, established at least five years before the date of submission; and
      iv. At least one evidentiary document establishing the individual's mother's presence in Arizona at the time of the individual's birth;

5. If an affidavit attesting to the facts of birth from the individual's father, the individual's mother, or other adult family member of the individual at least ten years older than the individual, who has personal knowledge of the individual's birth, is not available and:
   a. The individual is 14 years of age or younger, an additional evidentiary document containing the facts of the individual's birth, established before the individual was five years of age; or
   b. The individual is over 14 years of age, an additional evidentiary document containing the facts of the individual's birth, established at least five years before the date of submission; and
6. The fee in R9-19-105 for a request to establish a delayed birth record and register the individual's birth.

G. A person submitting a request for the registration of an individual's birth according to subsection (F) shall ensure that an evidentiary document required in:
1. Subsection (F)(4)(a)(ii) or subsections (F)(4)(b)(ii) and (F)(4)(b)(iii), as applicable, contains, in addition to the individual's first and last name:
   a. The individual's date of birth;
   b. The town, city, or county where the individual's birth occurred;
   c. The first and last name of the individual's mother, submitted as required in subsection (F)(2)(d)(i); or
   d. If applicable, the first and last name of the individual's father, submitted as required in subsection (F)(2)(e)(i); and
2. Subsection (F)(4)(a)(iii) or (F)(4)(b)(iv), as applicable:
   a. Contains the individual's mother's first and last name and street address, and
   b. Was created no more than six months before the date of the individual's birth or six months after the date of the individual's birth.

H. If a request for the registration of an individual's birth is submitted according to subsection (F) and the individual's birth occurred in Arizona before 1970, the State Registrar may:
1. Waive one of the evidentiary documents required in subsection (F)(4)(b) as long as at least two other evidentiary documents verify each of the pieces of the individual's birth information required in subsection (G)(1);
2. Accept as an evidentiary document an affidavit from an independent source, attesting to personal knowledge of the individual's birth; or
3. Consider all evidentiary documents submitted to determine whether the information contained in the evidentiary documents supports the registration of the individual's birth.

I. If an individual's birth occurred in Arizona before 1970, the individual is a member of a tribe recognized by the Federal Bureau of Indian Affair's Office of Federal Acknowledgement under 25 CFR Part 83, and the individual's birth is not registered, the individual or the individual's guardian may request the registration of the individual's birth by submitting to the State Registrar:
1. A "Certificate of No Record" for the individual issued by the State Registrar, dated not more than five years before the date the request in this subsection is submitted;
2. The following information, in a Department-provided format:
   a. Whether the individual has a registered birth record from another state or country;
   b. If the individual has a registered birth record from another state or country, the state or country that issued the individual's registered birth certificate;
   c. The individual's:
      i. Current name;
      ii. Name before first marriage;
      iii. Sex;
      iv. Date of birth; and
      v. Town, city, or county where the individual's birth occurred;
   d. The individual's mother's:
      i. Name before first marriage;
      ii. Current last name; and
      iii. Date of birth, if known;
   e. If applicable according to A.R.S. § 36-334, the name and, if known, date of birth of the individual's father; and
   f. A written statement attesting to the validity of the information required in subsections (I)(2)(a) through (e), signed by:
      i. The individual; or
      ii. If applicable, the individual's guardian or the person who has custody of the individual;
3. If the information is submitted by the individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court;
4. An evidentiary document verifying the individual's official tribal enrollment, issued by the Tribal Authority of the federally recognized tribe and certified by the Tribal Authority, containing:
   a. The individual's:
      i. Name before first marriage;
      ii. Date of birth; and
      iii. Town, city, or county where the individual's birth occurred;
   b. The individual's mother's name; and
   c. If applicable according to A.R.S. § 36-334, the individual's father's name;
5. One or more other evidentiary documents that:

a. Support the information provided according to subsection (I)(2)(c) through (e); and
b. May include an affidavit from an independent source, attesting to personal knowledge of the individual's birth; and
6. The fee in R9-19-105 for a request to establish a delayed birth record and register the individual's birth.

J. If the State Registrar determines that a request for registration of an individual's birth submitted according to subsection (F) or (I) and the evidentiary documents submitted as part of the request:
1. Contain the required information, meet the requirements in this Section, and are true and valid, the State Registrar shall:
a. Establish a delayed birth record for the individual that includes a summary statement that lists the evidentiary documents the State Registrar accepted as support for the registration of the individual's birth and register the individual's birth; and
b. Issue a certified copy of a certificate of delayed birth registration to the person who submitted the request to register the individual's birth; or
2. Do not contain the required information, do not meet the requirements in this Section, or may not be true or valid, the State Registrar shall:
a. Not establish a delayed birth record for the individual or register the individual's birth; and
b. Provide written notification to the person who submitted the request according to R9-19-103(C):
i. Specifying the missing, incomplete, false, or invalid information or evidentiary documents; and
ii. Informing the person that the person has 180 days after the date of the written notification in subsection (J)(2)(b) to provide the required information or evidentiary documents.

K. If a person who received the notification in subsection (J)(2)(b):
1. Submits all the required information or evidentiary documents to the State Registrar within the 180-day time period, the State Registrar shall establish a delayed birth record for the individual and issue a certified copy of a certificate of delayed birth registration to the person who submitted the request to register the individual's birth; or
2. Does not submit all the required information or evidentiary documents to the State Registrar within the 180-day time period, the State Registrar shall:
a. Comply with the requirements in R9-19-103(D) and (E); and
b. If denying the delayed registration of the individual's birth, in addition to the written notice required in R9-19-103(E)(2)(c), advise the person of the person's right to:
i. Appeal the State Registrar's determination, as prescribed in A.R.S. Title 41, Chapter 6, Article 6;
ii. If the individual has obtained the required information or evidentiary documents, apply to register the individual's birth as prescribed in subsection (F) or (I), as applicable; or
iii. Petition for a court order to register the individual's birth, as prescribed in A.R.S. § 36-333.03.

L. If the Department receives a court order, issued under A.R.S. § 36-333.03, for the registration of a delayed birth record for an individual, the Department shall establish a delayed birth record for the individual that includes a summary statement that lists the evidentiary documents the court accepted as support for the registration of the individual's birth and register the individual's birth.

M. After reviewing for completeness and compliance with R9-19-102, R9-19-201, and this Section, the State Registrar or a local registrar or deputy local registrar shall return an evidentiary document submitted to support a request to register an individual's birth to the person who submitted the request to register the individual's birth.

Historical Note

Former Section R9-19-204 renumbered to R9-19-203, new Section R9-19-204 renumbered from R9-19-205 effective July 31, 1989 (Supp. 89-3). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (Supp. 05-1). New Section R9-19-204 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-205. Establishing a Registered Birth Record for a Foundling

A. To establish a registered birth record for a foundling, a person who has custody of the foundling shall submit to the State Registrar or the local registrar or deputy local registrar of the registration district where the foundling was found:
1. The following information, in a Department-provided format:
a. The location where the foundling was found, including:
i. If the foundling is a newborn left with a safe haven provider according to A.R.S. § 13-3623.01, the facility where the foundling was found;
ii. If the foundling is not a newborn left with a safe haven provider according to A.R.S. § 13-3623.01, the name or a description of the place where the foundling was found;
iii. If applicable, the street address and the city or town; and
iv. The county;
b. The following information about the foundling:
i. Name given to the foundling;
ii. Approximate date of birth of the foundling, based on the foundling's approximate age;
iii. Sex;
iv. Approximate race of the foundling; and
v. If applicable, the identification number assigned to the foundling by the Department of Child Safety or a person designated by the Department of Child Safety to take custody of the foundling;

c. The date the foundling was found; and
d. The name and address of the person who has custody of the foundling;
2. A written statement attesting to the validity of the information submitted, signed and dated by the person who has custody of the foundling; and
3. A copy of the court order establishing custody, certified by the issuing court.

B. Upon receipt of the information and documents in subsection (A), the State Registrar shall establish a registered birth record for a foundling using the submitted information and include the street address, city or town, and county where the foundling was found as the place of the foundling's birth.

Historical Note

Amended effective February 20, 1980 (Supp. 80-1). Former Section R9-19-205 renumbered to R9-19-204, new Section R9-19-205 renumbered from R9-19-206 and amended effective July 31, 1989 (Supp. 89-3). Section R9-19-205 repealed; new Section R9-19-205 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-206. Establishing a Registered Record of Foreign Birth for an Adopted Individual

A. To establish a registered record of foreign birth for an adopted individual:
1. A state court, the adopted individual's adoptive parent, the married adopted individual, or the adopted individual of legal age shall submit to the State Registrar:
   a. An adoption decree or other official document, finalizing the adoption from the country of the adopted individual's birth, that meets the requirements in R9-19-102, and
   b. A copy of an IR-3 stamp in the individual's passport;
2. If the individual's adoptive parent has completed a re-adoption process in an Arizona court, the individual's adoptive parent or state court shall submit to the State Registrar a copy of an IR-3 stamp in the individual's passport and:
   a. An original state of Arizona certificate of adoption, issued by a court in this state; or
   b. A court order of adoption issued and certified by a court in this state and:
      i. A birth certificate from the country of the adopted individual's birth, translated into English; or
      ii. An evidentiary document stating the date and place of the adopted individual's birth; or
3. If the adopted individual does not have an IR-3 stamp in the individual's passport, the individual's adoptive parent, the married adopted individual, the adopted individual who is of legal age, or a state court shall submit to the State Registrar:
   a. An original state of Arizona certificate of adoption, issued by a court in this state;
   b. A court order of adoption issued and certified by a court in this state and:
      i. A birth certificate from the country of the adopted individual's birth that meets the requirements in R9-19-102, or
      ii. An evidentiary document stating the date and place of the adopted individual's birth; or
   c. If the individual was not adopted in this state, a court order, issued by a court in this state, that recognizes the adoption.

B. If the evidentiary documents submitted according to subsection (A) to establish a registered record of foreign birth for an adopted individual do not contain the following information, the person who submitted the evidentiary documents shall submit to the State Registrar:
1. The following information about the individual:
   a. Name;
   b. Date of birth;
   c. Town, city, or county where the individual's birth occurred;
   d. Sex; and
   e. Race;
2. The following information about the individual's adoptive mother:
   a. Name;
   b. Last name before first marriage;
   c. Date of birth;
   d. State, territory, or foreign country where the individual's adoptive mother was born;
   e. Street address, city or town, county, and state of the individual's adoptive mother's usual residence at the time of the individual's birth;
   f. Whether the individual's adoptive mother's usual residence at the time of the individual's birth is within city limits; and
   g. Social Security Number; and
3. If applicable according to A.R.S. § 36-334, the following information about the individual's adoptive father:
   a. Name;
   b. Date of birth;
   c. State, territory, or foreign country where the individual's adoptive father was born; and
   d. Social Security Number.

Historical Note

Amended effective February 20, 1980 (Supp. 80-1). Amended effective February 20, 1980 (Supp. 80-1). Former Section R9-19-206 renumbered to R9-19-205, new Section R9-19-206 renumbered from R9-19-207 and amended effective July 31, 1989 (Supp.

89-3). Section R9-19-206 repealed; new Section R9-19-206 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-207. Correcting Information in a Registered Birth Record

A. A person requesting a correction to an individual's registered birth record shall submit to the State Registrar or a local registrar, a written request to correct, in a Department-provided format, that includes:
1. The individual's name currently in the individual's registered birth record;
2. The individual's date of birth;
3. The name before first marriage of the individual's mother;
4. If known, the:
   a. Individual's sex;
   b. State file number;
   c. Town or city of the individual's birth;
   d. County of the individual's birth;
   e. Hospital where the individual was born, if applicable;
   f. Name of the individual's father; and
   g. Dates of birth of the individual's parents; and
5. The specific information in the individual's registered birth record to be corrected.

B. In addition to the information in subsection (A), an administrator of a hospital or the person in charge of the medical records for the hospital where an individual was born, who is requesting a correction to the individual's registered birth record because of a hospital error, shall submit to the State Registrar or a local registrar:
1. The name of the hospital administrator or the person in charge of the hospital's medical records who is requesting the correction;
2. A written statement attesting to the validity of the submitted correction, signed and dated by the hospital administrator or the person in charge of the hospital's medical records; and
3. A copy of the:
   a. Document required in R9-19-202(A), or
   b. Part of the individual's or the individual's mother's medical record containing the specific information in R9-19-201(A)(3) or (4) to be corrected.

C. In addition to the information in subsection (A), a physician, registered nurse practitioner, nurse midwife, or midwife who attended an individual's birth, submitted a request for the individual's birth registration according to R9-19-203, and requests a correction to the individual's registered birth record because of the physician's, registered nurse practitioner's, nurse midwife's, or midwife's error shall submit to the State Registrar or a local registrar:
1. The name of the physician, registered nurse practitioner, nurse midwife, or midwife who attended the individual's birth and who is requesting the correction;
2. A written statement attesting to the validity of the submitted correction, signed and dated by the physician, registered nurse practitioner, nurse midwife, or midwife who attended the individual's birth; and
3. A copy of the:
   a. Document required in R9-19-203(A), or
   b. Part of the individual's or the individual's mother's medical record containing the specific information in R9-19-201(A)(3) or (4) to be corrected.

D. In addition to requests for correction of an individual's registered birth record made according to subsections (B) or (C), a written request for a correction to an individual's registered birth record may be submitted by:
1. The individual, if the individual is of legal age or married;
2. A parent of the individual whose name is listed in the individual's registered birth record;
3. The individual's guardian; or
4. A person who has custody of the individual.

E. In addition to the information in subsection (A), a person in subsection (D) requesting a correction to an individual's registered birth record shall submit to the State Registrar or a local registrar:
1. The name and mailing address of the person requesting the correction;
2. An affidavit attesting to the validity of the submitted correction, signed by the person requesting the correction;
3. If the request for correction of the individual's registered birth record is submitted by:
   a. The individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; or
   b. A person who has custody of the individual, a copy of the court order establishing custody, certified by the issuing court;
4. If the request for correction of the individual's registered birth record is submitted more than 90 days after the individual's birth, an evidentiary document that includes the specific information to be corrected; and
5. The fee in R9-19-105 for a request to correct information in a registered birth record.

Historical Note

Amended effective February 20, 1980 (Supp. 80-1). Former Section R9-19-207 renumbered to R9-19-206, new Section R9-19-207 renumbered from R9-19-208 and amended effective July 31, 1989 (Supp. 89-3). Section R9-19-207 repealed; new Section R9-19-207 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-208. Amending Information in a Registered Birth Record

A. A person requesting an amendment to an individual's registered birth record shall include in a written request to amend:
1. The individual's name currently in the individual's registered birth record;
2. The individual's date of birth;
3. The name before first marriage of the individual's mother;
4. If known, the:
   a. Individual's sex;
   b. State file number;
   c. Town or city of the individual's birth;
   d. County of the individual's birth;
   e. Hospital where the individual was born, if applicable;
   f. Name of the individual's father; and
   g. Dates of birth of the individual's parents; and
5. The specific information in the individual's registered birth record to be amended, including, as applicable or as further specified in subsections of this Section, the specific information to be deleted and the specific information to be added.

B. Except for an amendment specified in another subsection of this Section, to request an amendment to an individual's registered birth record, a person requesting the amendment shall submit to the State Registrar:
1. A written request, in a Department-provided format, that includes:
   a. The information in subsection (A);
   b. The name and mailing address of the person requesting the amendment;
   c. The relationship between the individual and the person requesting the amendment; and
   d. An affidavit attesting to the validity of the submitted amendment, signed by the person requesting the amendment;
2. A copy of a court order to amend the individual's registered birth record, certified by the issuing court and including the information to be amended, as specified according to subsection (A)(5);
3. If the person submitting the request for the amendment to the individual's registered birth record is the individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; and
4. The fee in R9-19-105 for a request to amend information in a registered birth record.

C. An administrator of a hospital or the person in charge of the medical records for the hospital where an individual was born, who is requesting an amendment of information specified in R9-19-201(A)(3) or (4) in the individual's registered birth record because of a hospital error, shall submit to the State Registrar or a local registrar:
1. A written request, in a Department-provided format, that includes:
   a. The information in subsection (A);
   b. The name of the hospital administrator or the person in charge of the hospital's medical records who is requesting the amendment; and
   c. A written statement attesting to the validity of the submitted amendment, signed and dated by the hospital administrator or the person in charge of the hospital's medical records; and
2. A copy of the part of the individual's or the individual's mother's medical record containing the specific information to be amended.

D. A physician, registered nurse practitioner, nurse midwife, or midwife who attended an individual's birth, submitted a request for the individual's birth registration according to R9-19-203, and requests an amendment of information specified in R9-19-201(A)(3) or (4) in the individual's registered birth record because of the physician's, registered nurse practitioner's, nurse midwife's, or midwife's error shall submit to the State Registrar or a local registrar:
1. A written request, in a Department-provided format, that includes:
   a. The information in subsection (A);
   b. The name of the physician, registered nurse practitioner, nurse midwife, or midwife who attended an individual's birth; and
   c. A written statement attesting to the validity of the submitted amendment, signed and dated by the physician, registered nurse practitioner, nurse midwife, or midwife who attended the individual's birth; and
2. A copy of the part of the individual's or the individual's mother's medical record containing the specific information to be amended.

E. To add an individual's first name, middle name, or suffix to the individual's registered birth record 90 days or less after the individual's birth, the individual's parent or guardian shall submit to the State Registrar or a local registrar:
1. A written request, in a Department-provided format, that includes:
   a. The information in subsection (A), including the first name, middle name, or suffix to be added;
   b. The name and mailing address of the individual's parent or guardian requesting the amendment; and
   c. An affidavit attesting to the validity of the submitted amendment, signed, as applicable, by:
      i. Each parent whose name is included in the individual's birth record, or
      ii. The individual's guardian;
2. If the person submitting the request for the amendment to the individual's registered birth record is the individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; and
3. The fee in R9-19-105 for a request to amend information in a registered birth record.

F. To add an individual's first name, middle name, or suffix to the individual's registered birth record more than 90 days but less than seven years after the individual's birth, the individual's parent or guardian shall submit to the State Registrar or a local registrar:

1. A written request, in a Department-provided format, that includes:
   a. The information in subsection (A), including the first name, middle name, or suffix to be added;
   b. The name and mailing address of the individual's parent or guardian requesting the amendment; and
   c. An affidavit attesting to the validity of the submitted amendment, signed, as applicable, by:
      i. Each parent whose name is included in the individual's birth record, or
      ii. The individual's guardian;
2. An evidentiary document that:
   a. Includes the first name, middle name, or suffix to be added; and
   b. Was created within one year after the date of the individual's birth;
3. If the person submitting the request for the amendment to the individual's registered birth record is the individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; and
4. The fee in R9-19-105 for a request to amend information in a registered birth record.

G. To request the amendment of an individual's name in the individual's registered birth record 90 days or less after the individual's birth, the individual's parent or guardian shall submit to the State Registrar or a local registrar:
1. A written request, in a Department-provided format, that includes:
   a. The information in subsection (A), including the specific name to be deleted and the specific name to be added;
   b. The name and mailing address of the individual's parent or guardian requesting the amendment; and
   c. An affidavit attesting to the validity of the submitted amendment, signed, as applicable, by:
      i. Each parent whose name is included in the individual's birth record, or
      ii. The individual's guardian;
2. If the person submitting the request for the amendment to the individual's registered birth record is the individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; and
3. The fee in R9-19-105 for a request to amend information in a registered birth record.

H. To request the amendment of an individual's name in the individual's registered birth record more than 90 days but less than one year after the individual's birth, the individual's parent or guardian shall submit to the State Registrar or a local registrar:
1. A written request, in a Department-provided format, that includes:
   a. The information in subsection (A), including the specific name to be deleted and the specific name to be added;
   b. The name and mailing address of the individual's parent or guardian requesting the amendment; and
   c. An affidavit attesting to the validity of the submitted amendment, signed, as applicable, by:
      i. Each parent whose name is included in the individual's birth record, or
      ii. The individual's guardian;
2. An evidentiary document that:
   a. Includes the name to be added, and
   b. Was created within one year after the date of the individual's birth;
3. If the person submitting the request for the amendment to the individual's registered birth record is the individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; and
4. The fee in R9-19-105 for a request to amend information in a registered birth record.

I. To amend the month or day of an individual's birth in the individual's registered birth record, the individual, if the individual is of legal age or is married, or the individual's parent or guardian shall submit to the State Registrar or a local registrar:
1. A written request, in a Department-provided format, that includes:
   a. The information in subsection (A), including the month or day to be deleted and the month or day to be added;
   b. The name and mailing address of the individual or the individual's parent or guardian requesting the amendment; and
   c. An affidavit attesting to the validity of the submitted amendment, signed, as applicable, by:
      i. The individual;
      ii. The individual's parent requesting the amendment, whose name is included in the individual's birth record; or
      iii. The individual's guardian;
2. An evidentiary document that includes the requested month or day;
3. If the person submitting the request for the amendment to the individual's registered birth record is the individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; and
4. The fee in R9-19-105 for a request to amend information in a registered birth record.

J. To amend the date of birth or place of birth of an individual's parent in the individual's registered birth record, to change the individual's mother's last name in the individual's registered birth record to the individual's mother's last name before the individual's mother's first marriage, or to change the last name of the individual's father in the individual's registered birth record, the individual, if the individual is of legal age or is married, or the individual's parent or guardian shall submit to the State Registrar or a local registrar:
1. A written request, in a Department-provided format, that includes:
   a. The information in subsection (A), including the specific information in the individual's registered birth record to be amended, including the date of birth, place of birth, or name to be deleted and the date of birth, place of birth, or name to be added;
   b. The name and mailing address of the individual or the individual's parent or guardian requesting the amendment; and
   c. An affidavit attesting to the validity of the submitted amendment, signed, as applicable, by:
      i. The individual;
      ii. The individual's parent requesting the amendment, whose name is included in the individual's birth record; or

iii. The individual's guardian;

2. One of the following evidentiary documents containing the specific information for the individual's parent to be amended in the individual's registered birth record:
   a. A certified copy of the individual's parent's registered birth certificate;
   b. A copy of the individual's parent's passport; or
   c. A copy of an administrative order or court order establishing paternity, certified by the issuing entity;
3. If the person submitting the request for the amendment to the individual's registered birth record is the individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; and
4. The fee in R9-19-105 for a request to amend information in a registered birth record.

K. To request the amendment of an individual's registered birth record based on the individual's biological father's voluntary acknowledgement of paternity, the individual's mother and biological father shall submit to the State Registrar:

1. A voluntary acknowledgement of paternity form that complies with A.R.S. § 25-812;
2. The following information, which may be submitted as part of the voluntary acknowledgement of paternity or in a Department-provided format:
   a. The information in subsection (A);
   b. The names and mailing address of the individual's mother and biological father requesting the amendment;
   c. The following information about the individual's biological father:
      i. Name;
      ii. Date of birth;
      iii. State, territory, or foreign country where the individual's biological father was born;
      iv. Social Security Number;
      v. Race;
      vi. Whether the individual's father is of Hispanic origin and, if so, the type of Hispanic origin; and
      vii. Highest degree or level of education completed by the individual's father at the time of the individual's birth;
   d. If the request is submitted 90 days or less after the date of the individual's birth, the name requested for the individual; and
   e. If the request is submitted more than 90 days after the date of the individual's birth, the last name requested for the individual;
3. If an individual has a presumed father as described in A.R.S. § 25-814(A)(1), a written document that contains:
   a. The individual's name;
   b. The individual's presumed father's name;
   c. The individual's mother's name; and
   d. A jurat, as defined in A.R.S. § 41-311, signed by the individual's presumed father:
      i. Attesting to the fact that, although the individual's presumed father was married to the individual's mother, the individual's presumed father is not the biological father of the individual; and
      ii. Relinquishing and waiving all legal rights to the individual; and
4. The fee in R9-19-105 for a request to amend information in a registered birth record.

L. To request the amendment of an individual's registered birth record based on an administrative order or court order establishing paternity, a person shall submit to the State Registrar:

1. A copy of the administrative order or a court order establishing paternity, certified by the issuing entity;
2. The following information, which may be submitted as part of the administrative order or a court order establishing paternity or in a Department-provided format:
   a. The information in subsection (A);
   b. The name and mailing address of the person requesting the amendment; and
   c. The following information about the father to be added to the individual's registered birth record:
      i. Name;
      ii. Date of birth;
      iii. State, territory, or foreign country where the father was born; and
      iv. If the person requesting the amendment is not the issuing entity:
         (1) Social Security Number;
         (2) Race;
         (3) Whether the father is of Hispanic origin and, if so, the type of Hispanic origin; and
         (4) Highest degree or level of education completed by the father at the time of the individual's birth; and
3. The fee in R9-19-105 for a request to amend information in a registered birth record.

M. To request the amendment of the registered birth record of an individual born in Arizona based on the individual's adoption, a state court, the adopted individual's adoptive parent, the married adopted individual, or the adopted individual of legal age shall submit to the State Registrar:

1. A copy of the court order of adoption, certified by the issuing court, or a certificate of adoption with a court seal, after the individual's adoption is final;
2. If the document required in subsection (M)(1) does not contain the following, the person who submitted the request to amend the adopted individual's registered birth record shall submit to the State Registrar:
   a. The information in subsection (A);

b. The name and mailing address of the adopted individual's adoptive parent or the adopted individual requesting the amendment;
c. The individual's name established by the court order;
d. Whether the individual's adoptive parents want the information about the individual's parents currently in the individual's registered birth record to be retained;
e. If the individual's adoptive parents do not want the information about the individual's parents in the individual's registered birth record before the adoption to be retained in the individual's registered birth record after the adoption, the following information:
i. The name and date of birth of the individual's adoptive father;
ii. The state, territory, or foreign country where the individual's adoptive father was born;
iii. The individual's adoptive father's Social Security Number;
iv. The name and date of birth of the individual's adoptive mother;
v. The individual's adoptive mother's last name before first marriage;
vi. The state, territory, or foreign country where the individual's adoptive mother was born;
vii. The individual's adoptive mother's Social Security Number;
viii. Street address, city or town, county, and state of the individual's adoptive mother's residence at the time of the individual's birth; and
ix. Street address, city or town, county, and state of the individual's adoptive mother's current residence;
f. If the individual's adoptive parents want the information about the individual's parents in the individual's registered birth record before the adoption to be retained in the individual's registered birth record after the adoption, the name and date of birth of each of the individual's adoptive parents;
g. Whether the individual's adoptive parents want the name of the hospital, facility, or street address where the individual's birth occurred to be omitted in the amended birth record;
h. The signature of each of the individual's adoptive parents and the date signed;
i. The name of the court issuing the document required in subsection (M)(1); and
j. The date the final order of adoption was granted;
3. If the individual's adoptive parents want the information about the individual's parents in the individual's registered birth record before the adoption to be retained in the individual's registered birth record after the adoption:
a. A written request signed and dated by the adoptive parent or a copy of a court order, certified by the issuing court, containing a request to retain the information in the individual's registered birth record;
b. Either:
i. A written statement with the notarized signature of the individual's mother, agreeing to retain the mother's name in the individual's registered birth record; or
ii. If the individual's mother is deceased, a certified copy of a registered death certificate for the individual's mother; and
c. If a father's name is included in the individual's registered birth record, either:
i. A written statement with the notarized signature of the individual's father, agreeing to retain the father's name in the individual's registered birth record; or
ii. If the individual's father is deceased, a certified copy of a registered death certificate for the individual's father; and
4. The fee in R9-19-105 for a request to amend information in a registered birth record.

N. If the State Registrar receives a court order or a certificate of adoption with a court seal for an individual, submitted as required in subsection (M), that names two persons of the same sex as the individual's parents or the individual's mother and father, the State Registrar shall enter the name of each person as the individual's parent in the individual's birth record.

O. To request an amendment to an individual's registered birth record when the individual has undergone a sex change operation or has had a chromosomal count that establishes the sex of the individual as different than in the individual's registered birth record, an individual, if the individual is of legal age or is married, or the individual's parent or guardian shall submit to the State Registrar or a local registrar:
1. A written request, in a Department-provided format, that includes:
a. The information in subsection (A), including:
i. The individual's sex currently in the individual's registered birth record, and
ii. The requested change for the individual's sex to be included in the individual's registered birth record;
b. The name and mailing address of the individual or the individual's parent or guardian requesting the amendment; and
c. An affidavit attesting to the validity of the submitted amendment, signed, as applicable, by:
i. The individual;
ii. The individual's parent requesting the amendment, whose name is included in the individual's birth record; or
iii. The individual's guardian;
2. A written statement on a physician's letterhead paper, signed and dated by the physician, that the individual has:
a. Undergone a sex change operation, or
b. Had a chromosomal count that establishes the sex of the individual as different from that in the individual's registered birth record;
3. If the person submitting the request for the amendment to the individual's registered birth record is the individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; and
4. The fee in R9-19-105 for a request to amend information in a registered birth record.

P. The State Registrar or a local registrar shall amend an individual's registered birth record based on:
1. A request for an amendment, if the State Registrar or local registrar determines, according to R9-19-103, that the information and evidentiary documents in the request for amendment supports the amendment of the individual's registered birth record; or
2. Except as provided in subsection (Q), a court order.

Q. The State Registrar or a local registrar shall not amend the date of birth in an individual's registered birth record to a year later than the year in the date currently stated in the individual's registered birth record if any of the information in R9-19-201, required for registering the individual's birth, was received by the State Registrar or local registrar before the later date.

R. When the State Registrar or a local registrar amends a registered birth record, the State Registrar or local registrar shall seal the:
1. Registered birth record that existed before the amendment, and
2. Evidentiary documents submitted to support the amendment.

Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R9-19-208 renumbered to R9-19-207, new Section R9-19-208 renumbered from R9-19-209 and amended effective July 31, 1989 (Supp. 89-3). Section R9-19-208 repealed; new Section R9-19-208 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-209. Cancellation of a Registered Birth Record

A. The State Registrar shall cancel an individual's registered birth record if the State Registrar determines that:
1. Another registered birth record for the individual exists and was registered before the individual's birth was registered under this Article; or
2. The information submitted for registration of the birth and creation of the registered birth record was fraudulent, a misrepresentation of facts, or based on false documents.

B. If the State Registrar intends to cancel an individual's registered birth record as prescribed in subsection (A), the State Registrar shall provide written notice of the intent to cancel and the right to appeal the intent to cancel, as prescribed in A.R.S. Title 41, Chapter 6, Article 6, to:
1. The individual, if the individual is of legal age or is married; or
2. The individual's parent, if the individual is not of legal age and is not married, or, if applicable, the individual's guardian.

Historical Note

Former Section R9-19-209 renumbered to R9-19-208 effective July 31, 1989 (Supp. 89-3). New Section R9-19-209 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-210. Eligibility for a Certified Copy of a Certificate of Birth Registration

A. A certified copy of a certificate of birth registration contains, as available, the information specified in:
1. R9-19-201(A)(1) and (3) for a birth registered according to R9-19-202 or R9-19-203;
2. R9-19-201(B)(1) for a birth registered according to R9-19-204(A) or (B);
3. R9-19-204(F)(2)(c)(ii) through (v), (d)(ii) through (v), and (e)(i) through (iii) for a birth registered according to R9-19-204(F);
4. R9-19-204(I)(2)(c)(ii) through (v), (d), and (e) for a birth registered according to R9-19-204(I);
5. R9-19-205(A)(1)(a) and (b)(i) through (iii) for a foundling's birth record registration according to R9-19-205; and
6. R9-19-206(B)(1)(a) through (d), (2)(a) through (d), and (3)(a) through (c) for registering a foreign birth according to R9-19-206.

B. The following are eligible to receive a certified copy of an individual's certificate of birth registration:
1. The individual, if the individual is of legal age or married;
2. A parent of the individual;
3. The individual's spouse;
4. The individual's grandparent, adult child, adult grandchild, or adult brother or sister;
5. The individual's guardian;
6. A person designated in a power of attorney, established by the individual's parent or guardian according to A.R.S. § 14-5104 or 14-5107;
7. A person appointed as the individual's conservator according to A.R.S. Title 14, Chapter 5, Article 4;
8. A person designated in a court order to receive a certified copy of the individual's certificate of birth registration;
9. An attorney representing:
   a. The individual, if the individual is of legal age or married;
   b. The individual's parent; or
   c. The individual's guardian while acting on the individual's behalf;
10. An adoption agency, licensed according to A.R.S. § 8-126, or a private attorney if:
    a. An adoption of the individual is pending, and
    b. The adoption agency or private attorney represents the individual's biological parents or prospective adoptive parents; and
11. A governmental agency processing an adoption, a financial claim, a governmental benefit application, or another form of compensation on behalf of an individual, or having another official purpose for the certified copy of the individual's certificate of birth registration.

CHAPTER 19. DEPARTMENT OF HEALTH SERVICES - VITAL RECORDS AND STATISTICS

Historical Note

New Section R9-19-210 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-211. Requesting a Certified Copy of a Certificate of Birth Registration

A. A person eligible to receive a certified copy of an individual's certificate of birth registration according to R9-19-210(B)(1) through (8) may request a certified copy of the individual's certificate of birth registration by submitting to the State Registrar or a local registrar:

1. A written request, in a Department-provided format, that includes:
   a. The name and mailing address of the person submitting the request;
   b. Contact information for the person submitting the request, which includes a telephone number or an e-mail address;
   c. The relationship between the individual and the person submitting the request that makes the person eligible to receive a certified copy of the individual's certificate of birth registration;
   d. The individual's:
      i. Name in the individual's registered birth record,
      ii. Sex, and
      iii. Date of birth;
   e. The name before first marriage of the individual's mother;
   f. If known, the:
      i. State file number;
      ii. Town or city of the individual's birth;
      iii. County of the individual's birth;
      iv. Hospital where the individual was born, if applicable;
      v. Name of the individual's father; and
      vi. Dates of birth of the individual's parents;
   g. The number of certified copies of the individual's certificate of birth registration being requested; and
   h. The dated signature of the person submitting the request, either:
      i. With the person's signature notarized; or
      ii. Accompanied by a copy of a valid, government-issued form of photo identification for the person that contains the name and signature of the person;
2. Except for an individual who is 18 years of age or older or a parent whose name is included in the individual's registered birth record, one or more evidentiary documents demonstrating that the person is eligible to receive a certified copy of the individual's certificate of birth registration; and
3. The fee in R9-19-105 for each certified copy of the individual's certificate of birth registration being requested.

B. The following provides examples of documentation that meets the requirement in subsection (A)(2):

1. For the individual, if the individual is less than 18 years of age, documentation that the individual is emancipated, according to A.R.S. Title 12, Chapter 15, or married;
2. For a parent whose name is not included in the individual's registered birth record, either:
   a. A copy of a court order of adoption for the individual, certified by the issuing court, or a certificate of adoption for the individual with a court seal, including the parent's name as an adoptive parent of the individual; or
   b. A copy of a court order, certified by the issuing court, including the parent's name as a parent of the individual;
3. For the individual's spouse:
   a. A copy of the marriage certificate for the individual and the spouse; and
   b. A written document signed and dated by the individual authorizing the spouse to receive a copy of the individual's certificate of birth registration with either:
      i. The signature notarized, or
      ii. Accompanied by a copy of a valid, government-issued form of photo identification that contains the individual's name and signature;
4. For a person who is the individual's grandparent or the individual's adult child, grandchild, brother, or sister, either:
   a. A copy of one or more certificates of birth registration or certificates of death registration that show the person's relationship to the individual or, if a parent's name is included in the individual's registered birth record, the individual's parent; or
   b. For births or deaths registered in Arizona, information about the person or a related person whose birth or death was registered in Arizona, such as the person's name, date of birth, or parent's name and date of birth or date of death, that would enable the Department to locate the registered birth record or registered death record of the person or the related person;
5. For the individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court;
6. For a person designated in a power of attorney, established by the individual's parent or guardian according to A.R.S. § 14-5104 or 14-5107, a copy of the power of attorney;
7. For a person appointed as the individual's conservator according to A.R.S. Title 14, Chapter 5, Article 4, a copy of the court order establishing conservatorship, certified by the issuing court; and
8. For a person named in a court order to receive a certified copy of the individual's certificate of birth registration, a copy of the court order, certified by the issuing court.

C. An attorney representing an individual, the individual's parent, or the individual's guardian, according to R9-19-210(B)(9), may request a certified copy of the individual's certificate of birth registration by submitting to the State Registrar or a local registrar:
1. A written request, on the attorney's letterhead paper or in a Department-provided format, that includes:
   a. The attorney's name and state bar number;
   b. Contact information for the attorney, which includes a telephone number or an e-mail address;
   c. The name of the person the attorney is representing;
   d. The relationship of the person in subsection (C)(1)(c) to the individual;
   e. The information in subsections (A)(1)(d) through (f);
   f. The number of certified copies of the individual's certificate of birth registration being requested; and
   g. The dated signature of the attorney:
      i. With the attorney's signature notarized; or
      ii. Accompanied by a copy of a valid, government-issued form of photo identification for the attorney that contains the attorney's name and signature;
2. A copy of the attorney's retainer agreement with, as applicable, the individual, the individual's parent, or the individual's guardian;
3. If the retainer agreement is with a parent whose name is not included in the individual's registered birth record, documentation that complies with a requirement in subsection (B)(2);
4. If the retainer agreement is with the individual's guardian, a copy of the court order establishing guardianship, certified by the issuing court; and
5. The fee in R9-19-105 for each certified copy of the individual's certificate of birth registration being requested.

D. An adoption agency representing an individual's biological parents or prospective adoptive parents may request a certified copy of the individual's certificate of birth registration by submitting to the State Registrar or a local registrar:
1. A written request, on the adoption agency's letterhead paper or in a Department-provided format, that includes:
   a. The name, license number, and address of the adoption agency;
   b. The name of and contact information for the adoption agency's designee for the adoption, which includes a telephone number or an e-mail address;
   c. The name of the individual's biological parents or prospective adoptive parents;
   d. The information in subsections (A)(1)(d) through (f);
   e. The number of certified copies of the individual's certificate of birth registration being requested; and
   f. The dated signature of the adoption agency's designee:
      i. With the designee's signature notarized; or
      ii. Accompanied by a copy of a valid, government-issued form of photo identification for the designee that contains the designee's name and signature;
2. A copy of a petition to adopt that:
   i. Complies with A.R.S. § 8-109;
   ii. Includes the names of the individual and, as applicable, the individual's biological parents or prospective adoptive parents; and
   iii. Has been filed with a court of competent jurisdiction; and
3. If not included in the copy of a petition to adopt required in subsection (D)(2), a copy of a document demonstrating that the adoption agency is representing the individual's biological parents or prospective adoptive parents; and
4. The fee in R9-19-105 for each certified copy of the individual's certificate of birth registration being requested.

E. A private attorney representing an individual's prospective adoptive parents may request a certified copy of the individual's certificate of birth registration by submitting to the State Registrar or a local registrar:
1. A written request, on the attorney's letterhead paper or in a Department-provided format, that includes:
   a. The attorney's name and state bar number;
   b. Contact information for the attorney, which includes a telephone number or an e-mail address;
   c. The name of the individual's prospective adoptive parents;
   d. The information in subsections (A)(1)(d) through (f);
   e. The number of certified copies of the individual's certificate of birth registration being requested; and
   f. The dated signature of the attorney:
      i. With the attorney's signature notarized; or
      ii. Accompanied by a copy of a valid, government-issued form of photo identification for the attorney that contains the attorney's name and signature;
2. A copy of the attorney's retainer agreement with the individual's prospective adoptive parents;
3. A copy of a petition to adopt that:
   a. Complies with A.R.S. § 8-109,
   b. Includes the names of the individual and the individual's prospective adoptive parents, and
   c. Has been filed with a court of competent jurisdiction; and
4. The fee in R9-19-105 for each certified copy of the individual's certificate of birth registration being requested.

F. A governmental agency processing an adoption, a financial claim, a governmental benefit application, or another form of compensation on behalf of an individual, or having another official purpose for a certified copy of the individual's certificate of birth registration may request a certified copy of the individual's certificate of birth registration by submitting to the State Registrar or a local registrar:

1. A written request, on the governmental agency's letterhead paper or in a Department-provided format, that includes:
   a. The name and address of the governmental agency;
   b. The name of and contact information for the governmental agency's designee for the request, which includes a telephone number or an e-mail address;
   c. The information required in subsection (A)(1)(d) through (f);
   d. A description of the:
      i. Action the governmental agency is taking on behalf of the individual, or
      ii. Official purpose for which the governmental agency needs a certificate of the individual's birth registration;
   e. The reason the governmental agency is requesting a certified copy of the individual's certificate of birth registration; and
   f. The dated signature of the governmental agency's designee, accompanied by a copy of the designee's identification badge from the governmental agency verifying that the designee is an employee of the governmental agency; and
2. Unless the governmental agency is an agency as defined in A.R.S. § 41-1001, the fee in R9-19-105 for the certified copy of the individual's certificate of birth registration.

Historical Note

New Section R9-19-211 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-212. Requesting a Noncertified Copy of a Certificate of Birth Registration

A. A noncertified copy of a certificate of birth registration contains, as available, the information specified in R9-19-210(A).

B. Except as provided in subsection (C), a person who is conducting research may request a noncertified copy of an individual's certificate of birth registration by submitting to the State Registrar:
1. A written request, in a Department-provided format, that includes:
   a. The name and mailing address of the person submitting the request;
   b. Contact information for the person submitting the request, which includes a telephone number or an e-mail address;
   c. The reason the person is requesting a noncertified copy of the individual's certificate of birth registration;
   d. The information required in R9-19-211(A)(1)(d) through (f); and
   e. The dated signature of the person submitting the request;
2. Documentation from the Department's Human Subjects Review Board that the person is eligible to receive a noncertified copy of the individual's certificate of birth registration; and
3. The fee in R9-19-105 for the noncertified copy of the individual's certificate of birth registration.

C. A person who is a family member, including a niece or nephew, of an individual, who is conducting research for genealogical purposes, and who is of legal age may request a noncertified copy of the individual's certificate of birth registration by submitting to the State Registrar or a local registrar:
1. A written request, in a Department-provided format, that includes:
   a. The name and mailing address of the person submitting the request;
   b. Contact information for the person submitting the request, which includes a telephone number or an e-mail address;
   c. The relationship between the individual and the person submitting the request that makes the person eligible to receive a noncertified copy of the individual's certificate of birth registration;
   d. The information required in R9-19-211(A)(1)(d) through (f);
   e. A statement that the person is conducting research for genealogical purposes; and
   f. The dated signature of the person submitting the request, either:
      i. With the person's signature notarized; or
      ii. Accompanied by a copy of a valid, government-issued form of photo identification for the person that contains the name, date of birth, and signature of the person;
2. Documentation demonstrating that the person is eligible to receive a noncertified copy of the deceased individual's certificate of birth registration that may include:
   a. A copy of one or more certificates of birth registration or certificates of death registration that show the person's relationship to the individual or, if a parent's name is included in the individual's registered birth record, the individual's parent; or
   b. For births or deaths registered in Arizona, information about the person or a related person whose birth or death was registered in Arizona, such as the person's name, date of birth, or parent's name and date of birth or date of death, that would enable the Department to locate the registered birth record or registered death record of the person or the related person; and
3. The fee in R9-19-105 for the noncertified copy of the individual's certificate of birth registration.

D. A governmental agency processing an adoption, a financial claim, a governmental benefit application, or another form of compensation on behalf of an individual, or having another official purpose for the noncertified copy of the individual's certificate of birth registration may request a noncertified copy of the individual's certificate of birth registration by submitting to the State Registrar or a local registrar:
1. A written request, on the governmental agency's letterhead paper or in a Department-provided format, that includes:
   a. The name and address of the governmental agency;
   b. The name of and contact information for the governmental agency's designee for the request, which includes a telephone number or an e-mail address;
   c. The information required in R9-19-211(A)(1)(d) through (f);

d. A description of the:
   i. Action the governmental agency is taking on behalf of the individual, or
   ii. Official purpose for which the governmental agency needs a certificate of the individual's birth registration;
e. The reason the governmental agency is requesting a noncertified copy of the individual's certificate of birth registration; and
f. The dated signature of the governmental agency's designee, accompanied by a copy of the designee's identification badge from the governmental agency verifying that the designee is an employee of the governmental agency; and

2. Unless the governmental agency is an agency as defined in A.R.S. § 41-1001, the fee in R9-19-105 for the noncertified copy of the individual's certificate of birth registration.

Historical Note

New Section R9-19-212 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

ARTICLE 3. VITAL RECORDS FOR DEATH

R9-19-301. Human Remains Release Form

A. Except as provided in subsection (B), the form required by A.R.S. § 36-326(B) to accompany a deceased individual's human remains removed from a hospital, nursing care institution, or hospice inpatient facility is in a Department-provided format and shall include:

1. The name and street address of the hospital, nursing care institution, or hospice inpatient facility;
2. The deceased individual's:
   a. Name;
   b. Date of birth;
   c. Sex; and
   d. Social Security number or, if the deceased individual's Social Security number is not available, the deceased individual's medical record number;
3. The date and time of the death;
4. The name, telephone number, and e-mail address of the health care provider expected to sign the medical certification of death;
5. The name, telephone number, and relationship to the deceased individual of the individual authorizing the hospital, nursing care institution, or hospice inpatient facility to release the human remains;
6. The most recent diagnosis in the deceased individual's medical record;
7. A list of the circumstances in A.R.S. § 11-593(A);
8. Whether a notification required in A.R.S. § 11-593 was made;
9. If the deceased individual's human remains are being released to a funeral establishment or a person authorized to receive the deceased individual's communicable disease related information under A.R.S. § 36-664, whether the deceased individual had been diagnosed with or was suspected of having, as stated in the deceased individual's medical record at the time of death:
   a. Infectious tuberculosis,
   b. Human immunodeficiency virus,
   c. Creutzfeldt-Jakob disease,
   d. Hepatitis B,
   e. Hepatitis C, or
   f. Rabies;
10. For a death that occurred in a hospital, if the deceased individual's human remains have been accepted for donation by an organ procurement organization under A.R.S. Title 36, Chapter 7, Article 3, and the person authorized in A.R.S. § 36-843 has not made or refused to make an anatomical gift, whether the organ procurement organization has been notified that the deceased individual's human remains are being removed from the hospital; and
11. The name and signature of the individual representing the hospital, nursing care institution, or hospice inpatient facility who is releasing the human remains.

B. The form required by A.R.S. § 36-326(B) to accompany human remains from a fetal death removed from a hospital, nursing care institution, or hospice inpatient facility is in a Department-provided format and shall include:

1. The name and street address of the hospital, nursing care institution, or hospice inpatient facility;
2. The name of the mother;
3. The date of delivery;
4. The estimated gestational age or, if the gestational age is unknown, the weight of the human remains;
5. The name and telephone number of the parent authorizing the hospital, nursing care institution, or hospice inpatient facility to release the human remains;
6. A list of the circumstances in A.R.S. § 11-593(A);
7. Whether a notification required in A.R.S. § 11-593 was made;
8. For a fetal death that occurred in a hospital, if the human remains have been accepted for donation by an organ procurement organization under A.R.S. Title 36, Chapter 7, Article 3, and the person authorized in A.R.S. § 36-843 has not made or refused to make an anatomical gift, whether the organ procurement organization has been notified that the human remains are being removed from the hospital; and
9. The name and signature of the individual representing the hospital, nursing care institution, or hospice inpatient facility who is releasing the human remains.

C. An individual who removes human remains from a hospital, nursing care institution, or hospice inpatient facility shall sign and date the applicable human remains release form required in subsection (A) or (B), and note the time of removal when the individual removes the human remains from the hospital, nursing care institution, or hospice inpatient facility.

D. The individual in subsection (C) who removes human remains shall submit a copy of the applicable human remains release form required in subsection (A) or (B) to the local registrar or deputy local registrar of the registration district where the death or fetal death occurred within 24 hours after removing the human remains from a hospital, nursing care institution, or hospice inpatient facility.

Historical Note

Amended effective March 30, 1976 (Supp. 76-2). Amended effective February 20, 1980 (Supp. 80-1). Amended effective July 31, 1989 (Supp. 89-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Amended by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-302. Information for a Death Record

A. The information for a deceased individual's death record includes the following:

1. Demographic and final disposition information for the deceased individual's certificate of death registration:
   - a. The name, date of birth, and sex of the deceased individual;
   - b. Any other names by which the deceased individual was known, including, if applicable, the deceased individual's last name before first marriage;
   - c. The place of death including:
     - i. The county,
     - ii. Town or city, and
     - iii. Zip code;
   - d. If death was pronounced in a hospital, whether the deceased individual was:
     - i. An inpatient,
     - ii. An outpatient, or
     - iii. Dead on arrival at the hospital;
   - e. If death was pronounced somewhere other than a hospital, whether death was pronounced at:
     - i. The deceased individual's residence,
     - ii. A hospice inpatient facility,
     - iii. A nursing care institution, or
     - iv. Another location;
   - f. If death was pronounced at another location, a description of the location;
   - g. If death was pronounced:
     - i. In a health care institution, the facility name; or
     - ii. In a location other than a health care institution, the street address of the location;
   - h. The deceased individual's race;
   - i. Whether the deceased individual was of Hispanic origin and, if so, the type of Hispanic origin;
   - j. If the deceased individual was a member of a tribe recognized by the Federal Bureau of Indian Affair's Office of Federal Acknowledgement under 25 CFR Part 83, the name of the tribe;
   - k. Whether the deceased individual was ever in the U.S. Armed Forces;
   - l. The deceased individual's age:
     - i. If the deceased individual was one or more years old, in years since the deceased individual's birthday;
     - ii. If the deceased individual was one or more days old but less than one year old, in months and days; or
     - iii. If the deceased individual was less than one day old, in hours and minutes;
   - m. The deceased individual's marital status at the time of death;
   - n. The name of the deceased individual's surviving spouse, if applicable, and, if different, the spouse's last name before first marriage;
   - o. The state, county, and city of the deceased individual's birth or, if the birth did not happen in the United States, the name of the country where the birth occurred;
   - p. The deceased individual's Social Security Number;
   - q. The deceased individual's usual occupation;
   - r. The address, including the street address, town or city, state, zip code, and county, of the deceased individual's usual residence;
   - s. If the deceased individual's usual residence is not in the United States, the name of the country of the deceased individual's usual residence;
   - t. The name of the deceased individual's father;
   - u. The name before first marriage of the deceased individual's mother;
   - v. The following information about the individual providing the demographic and final disposition information about the deceased individual:
     - i. The individual's name;
     - ii. Relationship to the deceased individual; and

iii. The individual's mailing address, including street address, city or town, state, zip code, and, if outside the U.S., country;

w. The anticipated final disposition of the human remains, including one or more of the following:

i. Burial;

ii. Entombment;

iii. Cremation;

iv. Anatomical gift, except for an anatomical gift of a part;

v. Removal from the state; and

vi. Other final disposition of the human remains;

x. If an anticipated final disposition is anatomical gift, except for an anatomical gift of a part, another anticipated final disposition other than removal from the state;

y. If an anticipated final disposition is removal from the state:

i. Whether removal from the state includes removal from the United States; and

ii. Another anticipated final disposition specified in subsection (A)(1)(w)(i), (ii), (iii), or (vi);

z. If an anticipated final disposition of the human remains is another means of final disposition, a description of the anticipated final disposition;

aa. The name and location where each final disposition of the human remains took place, and the date of each final disposition;

bb. If applicable, the name and address of the funeral establishment; and

cc. As applicable:

i. The name and license number of the funeral director in charge of the final disposition of the human remains; or

ii. If a funeral director is not in charge of the final disposition of the human remains, the name of the responsible person and, if the responsible person is not the individual identified in subsection (A)(1)(v), the responsible person's:

(1) Relationship to the deceased individual; and

(2) Mailing address, including street address, city or town, state, zip code, and, if outside the U.S., country;

2. Other demographic and final disposition information for the deceased individual's death record:

a. Whether the deceased individual's usual residence was within city limits;

b. Whether the deceased individual's usual residence was in a tribal community at the time of death;

c. If the deceased individual's usual residence was in a tribal community at the time of death, the name of the tribal community;

d. How long the deceased individual resided in Arizona before the deceased individual's death;

e. The type of business or industry in which the deceased individual usually worked;

f. The name of the country of which the deceased individual was a citizen;

g. The highest educational grade completed by the deceased individual; and

h. If the anticipated final disposition of the deceased individual's human remains is cremation, documentation of the approval of the medical examiner of the county where the death occurred for the cremation of the human remains;

3. Medical certification information for the deceased individual's certificate of death registration:

a. The date of death and whether the date is the actual date of death or a date determined through a death investigation conducted under A.R.S. § 11-597;

b. The time death was pronounced;

c. The conditions leading to the immediate cause of death, including the underlying causes of death;

d. For each cause or condition listed according to subsection (A)(3)(c), the length of time from the onset of the cause or condition to the time of death;

e. Any other conditions contributing to the death;

f. Whether an autopsy was performed on the deceased individual;

g. Whether autopsy results were available to complete the cause of death;

h. The manner of death;

i. The name, title, and address of the medical certifier; and

j. The date the medical certifier signed the medical certification of death; and

4. Other medical certification information for the deceased individual's death record:

a. If the medical certifier is a health care provider, the health professional license number of the medical certifier;

b. If the medical certifier is a tribal law enforcement authority, the badge number of the medical certifier;

c. Whether tobacco use contributed to the cause of death;

d. If the deceased individual was female, whether:

i. The deceased individual was pregnant within the last year;

ii. The deceased individual was pregnant at the time of death;

iii. The deceased individual was not pregnant at the time of death, but pregnant within 42 days before death;

iv. The deceased individual was not pregnant at the time of death, but pregnant 43 days to one year before death; or

v. It is unknown whether the deceased individual was pregnant within the last year; and

e. Whether a notification required in A.R.S. § 11-593 was made.

B. If a medical examiner determined the manner of death in subsection (A)(3)(h) for a deceased individual, in addition to the information in subsections (A)(3) and (4), the medical certification information for the deceased individual's death record includes:

1. For the deceased individual's certificate of death registration, whether the:

a. Manner of death was due to:
   i. Natural causes,
   ii. An accident,
   iii. Suicide,
   iv. Homicide, or
   v. An undetermined cause; and
b. Whether the death was as a result of an injury and, if so, whether the injury occurred while the deceased individual was working or at the deceased individual's workplace; and

2. The following other medical certification information for the deceased individual's death record:
   a. If the death was as a result of an injury:
      i. The date and time of the injury,
      ii. The type of location where the injury occurred,
      iii. The address of the location where the injury occurred, and
      iv. A description of how the injury occurred; and
   b. If the death was caused by a transportation accident, whether the deceased individual at the time of the transportation accident was:
      i. The driver or operator of the transportation vehicle,
      ii. A passenger in the transportation vehicle,
      iii. A pedestrian, or
      iv. Involved in another activity affected by the transportation accident.

Historical Note

Amended effective March 30, 1976 (Supp. 76-2). Amended effective February 20, 1980 (Supp. 80-1). Amended effective July 31, 1989 (Supp. 89-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section R9-19-302 renumbered to R9-19-308; new Section made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-303. Registration of a Deceased Individual's Death

A. Before requesting the registration of a deceased individual's death, a responsible person or funeral director who is responsible for the final disposition of the deceased individual's human remains shall:
1. Obtain, in a written format:
   a. The information in R9-19-302(A)(1)(a) through (v) and (2)(a) through (g); and
   b. A statement attesting to the validity of the information in R9-19-302(A)(1)(a) through (v) and (2)(a) through (g), signed and dated by the person providing the information;
2. Provide, in a Department-provided format, the information in R9-19-3-302(A)(1)(w) through (cc); and
3. If applicable, obtain the documentation required in R9-19-302(A)(2)(h).

B. Except as provided in subsection (G) or (I) or R9-19-304, within seven days after a deceased individual's death, a responsible person or funeral director who is responsible for the final disposition of the deceased individual's human remains shall:
1. Submit to the State Registrar or a local registrar or deputy local registrar of the registration district where the death occurred, in a Department-provided format:
   a. The information specified in R9-19-302(A)(1) and (2), and
   b. An attestation of the validity of the submitted information and documentation in R9-19-302(A)(1)(w) through (cc) and (2)(h);
2. If the information required in R9-19-302(A)(1) and (2) is not submitted electronically, include:
   a. The written statement in subsection (A)(1)(b), and
   b. A written statement attesting to the validity of the submitted information and documentation in R9-19-302(A)(1)(w) through (cc) and (2)(h), signed and dated by the responsible person or funeral director who is responsible for the final disposition of the deceased individual's human remains; and
3. Contact the health care provider expected to sign the deceased individual's medical certification of death to:
   a. Provide information about the deceased individual, in a Department-provided format, to enable the health care provider to identify the deceased individual; and
   b. Inform the health care provider that the deceased individual's death record has been established and is available for medical certification information to be entered.

C. Except as provided in R9-19-304, a medical certifier shall:
1. Review the information provided according to subsection (B)(3)(a) for a deceased individual and either verify the information is correct or make corrections to the provided information; and
2. Complete and submit, in a Department-provided format, to the State Registrar or the local registrar of the county where the death occurred, as soon as possible and no more than 72 hours after the death, a medical certification of death for the deceased individual that includes:
   a. The information specified in R9-19-302(A)(3) and (4) and corrections made to the information provided according to subsection (B)(3)(a); and
   b. An attestation:

i. Stating that, to the best of the medical certifier's knowledge:
(1) The information provided according to subsection (B)(3)(a) is correct or was corrected, and
(2) Death occurred due to the cause and manner stated; and
ii. If not submitted electronically, signed and dated by the medical certifier; and

3. When specifying the conditions leading to the immediate cause of death, including the underlying cause of death, use the applicable standards from the Physicians' Handbook on Medical Certification, DHHS Publication No. (PHS) 2003-1108, published by the Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, incorporated by reference, on file with the Department, and including no future editions or amendments, available through http://www.cdc.gov/nchs/data/misc/hb_cod.pdf or from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954.

D. Upon receiving information submitted according to subsections (B) or (C), the State Registrar or the local registrar of the county where a death occurred shall:

1. If the information submitted to register the deceased individual's death indicates that the human remains are to be cremated and the medical certification of death was not signed by the medical examiner, as required in A.R.S. § 11-599, request that the medical examiner review the medical certification of the deceased individual's death;
2. If the information submitted to register the deceased individual's death indicates that the deceased individual's death may have occurred under circumstances set forth in A.R.S. § 11-593 and the medical certification of death was not signed by the medical examiner, as required in A.R.S. § 11-594, or a tribal law enforcement authority, as allowed by A.R.S. § 36-325(I):
   a. Not register the deceased individual's death; and
   b. Request that the medical examiner or, if applicable, tribal law enforcement authority:
      i. Review the circumstances of the individual's death to determine whether:
         (1) The medical examiner has jurisdiction according to A.R.S. § 11-593, or
         (2) The tribal law enforcement authority has jurisdiction according to A.R.S. § 36-325(I);
      ii. Notify the State Registrar or the local registrar of the county where a death occurred of the determination; and
      iii. If applicable, complete and sign the medical certification of the deceased individual's death according to R9-19-304(B); and
3. Within 72 hours, either:
   a. Register the deceased individual's death; or
   b. Notify the person submitting the information according to subsections (B) or (C), as specified in R9-19-103(C).

E. A responsible person or representative of a funeral establishment responsible for submitting the information in subsection (B) to the State Registrar or a local registrar or deputy local registrar of the registration district where a deceased individual's death occurred shall:

1. Maintain a copy of the document in subsection (A) for at least 10 years after the date on the document, and
2. Provide a copy of the document in subsection (A) to the State Registrar for review within 48 hours after the time of the State Registrar's request.

F. If a deceased individual's death occurs in this state and is not registered within one year after the date of the deceased individual's death, the State Registrar or a local registrar or deputy local registrar shall establish a delayed death record for the deceased individual and register the deceased individual's death.

G. To request the registration of a delayed death record for a deceased individual:

1. Except as provided in subsections (G)(2) and (3) or R9-19-304(G), a person shall submit to the State Registrar or a local registrar or deputy local registrar of the registration district where the death occurred:
   a. A court order requiring registration of the deceased individual's death, certified by the issuing court, and containing the deceased individual's:
      i. Name,
      ii. Social Security Number,
      iii. Date of birth,
      iv. Date of death,
      v. Cause of death, and
      vi. Location of death;
   b. If not included in the court order in subsection (G)(1)(a), the information in R9-19-302(A)(1) and (2), as available;
   c. An affidavit attesting to the validity of the information required in subsection (G)(1)(b), signed by the person making the request; and
   d. The fee in R9-19-105 for requesting to establish a delayed death record and register the deceased individual's death;
2. A medical certifier shall submit, in a Department-provided format, to the State Registrar or a local registrar or deputy local registrar of the registration district where the death occurred:
   a. The information specified in R9-19-302(A)(1) and (2);
   b. A medical certification of the deceased individual's death, completed as required in subsection (C); and
   c. A description of the circumstances causing the delay; and
3. A responsible person shall submit, in a Department-provided format, to the State Registrar or a local registrar or deputy local registrar of the registration district where the death occurred:
   a. The information specified in R9-19-302(A)(1) and (2);
   b. A medical certification of the deceased individual's death, completed as required in subsection (C);

c. A description of the circumstances causing the delay;
d. An affidavit attesting to the validity of the information required in subsections (G)(1)(a) through (c), signed by the person making the request; and
e. The fee in R9-19-105 for requesting to establish a delayed death record and register the deceased individual's death;

H. When the State Registrar or a local registrar or deputy local registrar of the registration district where a death occurred receives a request to register the death of a deceased individual according to subsection (G), the State Registrar, local registrar, or deputy local registrar shall review the request according to R9-19-103.

I. To request the registration of an individual's presumptive death under A.R.S. § 36-325(L) or 36-328, a person requesting registration shall submit to the State Registrar:
1. A court order requiring registration of the individual's presumptive death, certified by the issuing court, and containing the deceased individual's:
   a. Name,
   b. Social Security Number,
   c. Date of birth,
   d. Date of death,
   e. Cause of death, and
   f. Location of death;
2. If not included in the court order in subsection (I)(1), the information in R9-19-302(A)(1) and (2), as available;
3. An affidavit attesting to the validity of the information required in subsection (I)(2), signed by the person making the request; and
4. The fee in R9-19-105 for requesting to establish a death record or delayed death record for a presumptive death.

Historical Note

Amended effective July 31, 1989 (Supp. 89-3). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (Supp. 05-1). New Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section repealed; new Section made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-304. Registration of a Death When a Medical Examiner is Notified According to A.R.S. § 11-593(B)

A. If a medical examiner of the registration district where a deceased individual's death occurred is notified according to A.R.S. § 11-593(B), the medical examiner shall determine whether the deceased individual died under any of the circumstances described in A.R.S. § 11-593(A) and:
1. If the medical examiner determines that the deceased individual did not die under any of the circumstances described in A.R.S. § 11-593(A):
   a. Document:
      i. The medical examiner's determination that the medical examiner does not have jurisdiction according to A.R.S. § 11-593, and
      ii. The name of a health care provider who had been providing current care to the deceased individual;
   b. Provide, upon request, a copy of the documentation in subsection (A)(1)(a) to the State Registrar or a local registrar or deputy local registrar of the registration district where the deceased individual's death occurred; and
   c. Notify the State Registrar or the local registrar or deputy local registrar of the registration district where the deceased individual's death occurred of the determination; and
2. If the medical examiner determines that the deceased individual died under any of the circumstances described in A.R.S. § 11-593(A), take charge of the deceased individual's human remains under A.R.S. § 11-594.

B. If the medical examiner of the registration district where a deceased individual's death occurred takes charge of the deceased individual's human remains under A.R.S. § 11-594, the medical examiner shall submit the medical certification of death in a Department-provided format:
1. To the State Registrar or a local registrar or deputy local registrar of the registration district where the deceased individual's death occurred according to A.R.S. § 36-325(C);
2. That includes:
   a. The deceased individual's name, date of birth, and sex;
   b. Any other names by which the deceased individual was known, including, if applicable, the deceased individual's last name before first marriage;
   c. The date of the individual's death;
   d. The place of death including:
      i. Either:
         (1) The name of the facility where the death occurred; or
         (2) If the death did not occur in a facility, the street address at which the death occurred or, if the location at which the death occurred does not have a street address, another indicator of the location at which the death occurred;
      ii. The county;
      iii. The town or city; and
      iv. Zip code;
   e. The deceased individual's age;

f. Whether the cause or manner of death is pending investigation at the time the information is submitted;
g. If the cause and manner of death are not pending investigation, the information in R9-19-302(A)(3) and (4) and (B); and
h. If the cause or manner of death is pending investigation:
i. The word "pending" for the:
(1) Cause of death required in R9-19-302(A)(3)(c), or
(2) Manner of death required in R9-19-302(A)(3)(h);
ii. The remaining information in R9-19-302(A)(3) and (4); and
iii. The information required in R9-19-302(B); and

3. That is signed and dated by the medical examiner, attesting that, on the basis of examination or investigation, as applicable, death occurred at the time, date, and place, and due to the cause and manner stated.

C. When specifying the conditions leading to the immediate cause of death, including the underlying cause of death, a medical examiner shall use the applicable standards from the Medical Examiners' and Coroners' Handbook on Death Registration and Fetal Death Reporting, DHHS Publication No. (PHS) 2003-1110 published by the Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, incorporated by reference, on file with the Department, and including no future editions or amendments, available through http://www.cdc.gov/nchs/data/misc/hb_me.pdf or from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954.

D. Upon determination of the cause or manner of death, a medical examiner who had indicated, according to subsection (B)(2)(h), that the cause or manner of death was pending investigation shall submit an amendment according to R9-19-310 that includes the cause or manner of death, using the standards in subsection (C).

E. Within seven days after receiving a deceased individual's human remains from a medical examiner, a responsible person or funeral director who is responsible for the final disposition of the deceased individual's human remains shall:
1. Comply with the requirements in R9-19-303(A); and
2. Submit to the State Registrar or a local registrar or deputy local registrar of the registration district where the death occurred, and in a Department-provided format, the information specified in R9-19-302(A)(1) and (2).

F. Upon receiving information submitted according to subsections (B), (E), and, if applicable (D), the State Registrar or the local registrar of the county where a death occurred shall:
1. Review the information received;
2. Enter into a deceased individual's death record any missing information provided according to subsection (B), (E), or, if applicable (D); and
3. Within 72 hours, either:
a. Register the deceased individual's death, or
b. Notify the person submitting the information according to subsection (B) or (E), as specified in R9-19-103(C).

G. To request the registration of a delayed death record for a deceased individual, a medical examiner or a tribal law enforcement authority shall submit, in a Department-provided format, to the State Registrar or a local registrar or deputy local registrar of the registration district where the death occurred the information required in R9-19-302.

Historical Note

Amended effective July 31, 1989 (Supp. 89-3). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (Supp. 05-1). New Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section repealed; new Section made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-305. Fetal Death Registration

A. Before requesting the registration of a fetal death, a hospital, an abortion clinic, a physician, a nurse midwife, or a midwife shall:
1. Obtain, in a written format:
a. The information in subsections (B)(1)(a) through (f), (v), and (w) and (2)(a) through (f) from a parent of the deceased or another family member who is of legal age; and
b. A statement attesting to the validity of the information in subsections (B)(1)(a) through (f), (v), and (w) and (2)(a) through (f), signed and dated by the individual providing the information; and
2. Provide, in a Department-provided format, the information in:
a. Subsections (B)(1)(g) through (o) and (2)(g) through (u); and
b. Unless a funeral director is responsible for the final disposition of the human remains, subsections (B)(1)(p) through (u).

B. Except as provided in subsection (D) and R9-19-306, a hospital, an abortion clinic, a physician, a nurse midwife, or a midwife shall submit to the State Registrar or a local registrar, according to A.R.S. § 36-329 and in a Department-provided format:
1. Information for the deceased's certificate of fetal death registration:
a. The name of the deceased, if applicable;
b. Location where delivery occurred, including:
i. The city or town, zip code, and county where the delivery occurred; and
ii. Whether delivery occurred in a residence or another facility;
c. If delivery occurred at a residence, the street address of the residence or, if the residence where the delivery occurred does not have a street address, another indicator of the location at which the delivery occurred;

d. If delivery occurred in a facility, the:
   i. Name of the facility where delivery occurred, and
   ii. Type of facility where delivery occurred;
e. The following information about the deceased's father:
   i. Name;
   ii. Date of birth; and
   iii. State, territory, or foreign country where the father was born;
f. The following information about the deceased's mother:
   i. Current name;
   ii. Street address, apartment number if applicable, city or town, state, zip code, and county of the mother's usual residence;
   iii. If the mother's usual residence is not in the United States, the country of the mother's usual residence;
   iv. Date of birth;
   v. Name before first marriage; and
   vi. State, territory, or foreign country where the mother was born;
g. The deceased's sex;
h. Plurality of delivery;
i. If plurality involves more than one, the deceased's order of birth;
j. Date of delivery;
k. Hour of delivery;
l. Any cause or condition that contributed to the fetal death, specified according to the applicable standards incorporated by reference in R9-19-303(C)(3) or R9-19-304(C), as applicable;
m. Any other significant causes or conditions related to the fetal death;
n. If a medical examiner of the registration district where the fetal death occurred took charge of the human remains under A.R.S. § 11-594, the name and health professional license number of the medical examiner;
o. The name and, if applicable, professional credential of the individual attending the delivery; and
p. The anticipated final disposition of the human remains, including one or more of the following:
   i. Hospital or abortion clinic disposition;
   ii. Burial;
   iii. Entombment;
   iv. Cremation;
   v. Anatomical gift, except for an anatomical gift of a part;
   vi. Removal from the state; and
   vii. Other final disposition of the human remains;
q. If an anticipated final disposition is anatomical gift, except for an anatomical gift of a part, another anticipated final disposition other than removal from the state;
r. If an anticipated final disposition is removal from the state:
   i. Whether removal from the state includes removal from the United States; and
   ii. Another anticipated final disposition specified in subsection (B)(1)(p)(ii), (iii), (iv), or (vii);
s. If an anticipated final disposition of the human remains is another means of final disposition, a description of the anticipated final disposition;
t. The name and location where each final disposition of the human remains took place, and the date of each final disposition;
u. If a funeral establishment is responsible for the final disposition of the human remains:
   i. The name and address of the funeral establishment, and
   ii. The name and license number of the funeral director;
v. If a person is responsible for the final disposition of the human remains, the name and address of the responsible person; and
w. The name and title of the individual providing the information;

2. Other information for the deceased's fetal death record:
   a. If delivery occurred at a residence, whether the delivery was planned to occur at the residence;
   b. The following information about the deceased's father:
      i. Race;
      ii. Whether the father is of Hispanic origin and, if so, the type of Hispanic origin; and
      iii. Highest degree or level of education completed by the father at the time of the deceased's delivery;
   c. The following information about the deceased's mother:
      i. Race;
      ii. Highest degree or level of education completed by the mother at the time of the deceased's delivery;
      iii. Whether the mother's usual residence is inside city limits;
      iv. Whether the mother's usual residence is in a tribal community and, if so, the name of the tribal community; and
      v. Height;
   d. Whether the deceased's mother:
      i. Is of Hispanic origin and, if so, the type of Hispanic origin;
      ii. Received food from WIC for herself during the pregnancy; or

iii. Was married at the time of delivery;

e. The deceased's mother's history of:
   i. Smoking before or during the pregnancy,
   ii. Prenatal care for this pregnancy, and
   iii. Previous pregnancies and pregnancy outcomes;

f. The deceased's mother's:
   i. Pre-pregnancy weight;
   ii. Weight at delivery; and
   iii. Date the last normal menses began;

g. The principal source of payment for the delivery;

h. If applicable, the National Provider Identifier of the facility where delivery occurred;

i. Estimation of the deceased's gestational age;

j. Weight in grams of the deceased at delivery;

k. Whether:
   i. The deceased was dead at first assessment with no ongoing labor,
   ii. The deceased was dead at first assessment with ongoing labor,
   iii. The deceased died during labor after first assessment, or
   iv. It is unknown when the deceased died;

l. The following medical information about the deceased's mother:
   i. Medical risk factors during this pregnancy;
   ii. Characteristics of the labor and delivery; and
   iii. Medical complications during labor or delivery;

m. Whether the deceased's mother was transferred from one facility to another facility for a maternal medical condition or fetal medical condition before the delivery;

n. If the deceased's mother was transferred from one facility to another facility before the delivery, the name of the facility from which the deceased's mother was transferred;

o. Whether the prenatal record was available for completion of the fetal death report;

p. Any congenital anomalies of the deceased;

q. Whether an autopsy was planned or performed;

r. Whether a histological placental examination was performed;

s. Whether autopsy or histological placental examination results were used in determining the cause of the fetal death;

t. Whether the placenta appearance was normal or abnormal; and

u. A description of the fetal appearance at delivery; and

3. A written statement attesting to the validity of the submitted information, signed and dated by the designee of the person submitting the information.

C. To request the registration of a fetal death more than seven days after the fetal death, a hospital, an abortion clinic, a physician, a nurse midwife, or a midwife shall submit, in a Department-provided format, to the State Registrar:
1. The information required in subsections (A)(1) and (2);
2. A description of the circumstances causing the delay; and
3. A written statement attesting to the validity of the information required in subsections (B)(1) and (2), signed and dated by the person making the request.

D. Within seven days after receiving the human remains from a fetal death from a hospital, an abortion clinic, a physician, a nurse midwife, or a midwife, a responsible person or funeral director who is responsible for the final disposition of the human remains shall submit to the State Registrar or the local registrar of the registration district in which the fetal death occurred, in a Department-provided format, any information specified in subsections (B)(1)(a) through (f) and (p) through (w) and (2)(a) through (e) that had not been submitted by the hospital, abortion clinic, physician, nurse midwife, or midwife, according to subsection (B).

E. If a fetal death occurs in this state and is not registered within one year after the date of the fetal death, the State Registrar or a local registrar shall establish and register a delayed fetal death record.

F. When the State Registrar or a local registrar or deputy local registrar of the registration district where a fetal death occurred receives a request to register the fetal death, the State Registrar, local registrar, or deputy local registrar shall review the request according to R9-19-103.

G. A hospital, an abortion clinic, a physician, a nurse midwife, or a midwife responsible for submitting the information in subsection (B) to the State Registrar or a local registrar or deputy local registrar shall:
1. Maintain a copy of the evidentiary document in subsection (A) for at least 10 years after the date on the evidentiary document, and
2. Provide a copy of the evidentiary document in subsection (A) to the State Registrar for review within 48 hours after the State Registrar's request.

Historical Note

Former Section R9-19-305 repealed, new Section R9-19-305 adopted effective February 20, 1980 (Supp. 80-1). Amended effective July 31, 1989 (Supp. 89-3). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (Supp. 05-1). New Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section R9-19-305 re-

pealed; new Section R9-19-305 renumbered from R9-19-306 and amended by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-306. Registration of a Fetal Death When a Medical Examiner is Notified According to A.R.S. § 11-593(B)

A. If a medical examiner of the registration district where a fetal death occurred is notified according to A.R.S. § 11-593(B), the medical examiner shall determine whether the fetal death occurred under any of the circumstances described in A.R.S. § 11-593(A) and:
1. If the medical examiner determines that the fetal death did not occur under any of the circumstances described in A.R.S. § 11-593(A):
   a. Document:
      i. The medical examiner's determination that the medical examiner does not have jurisdiction according to A.R.S. § 11-593, and
      ii. The name of a health care provider who had been providing current care to the deceased's mother;
   b. Provide, upon request, a copy of the documentation in subsection (A)(1)(a) to the State Registrar or a local registrar or deputy local registrar of the registration district where the fetal death occurred; and
   c. Notify the State Registrar or the local registrar or deputy local registrar of the registration district where the fetal death occurred of the determination; and
2. If the medical examiner determines that the fetal death occurred under any of the circumstances described in A.R.S. § 11-593(A), take charge of the human remains under A.R.S. § 11-594.

B. If the medical examiner of the registration district where a fetal death, which requires registration under A.R.S. § 36-329, occurred takes charge of the human remains under A.R.S. § 11-594, the medical examiner shall submit to the State Registrar or the local registrar of the registration district where the fetal death occurred, according to A.R.S. § 36-325(C) and in a Department-provided format:
1. Whether the cause of fetal death is pending investigation at the time the information is submitted;
2. If the cause of fetal death is not pending investigation:
   a. The information in R9-19-305(B)(1)(a) through (o), (1)(w), and (2)(i) through (u); and
   b. If known, the information in R9-19-305(B)(1)(p) through (v) and (2)(a) through (h); and
3. If the cause of fetal death is pending investigation:
   a. The word "pending" for the cause of fetal death required in R9-19-305(B)(1)(l);
   b. The remaining information in subsection (B)(2)(a); and
   c. If known, the information in subsection (B)(2)(b).

C. Upon determination of the cause of fetal death, a medical examiner who had indicated, according to subsection (B)(3), that the cause of fetal death was pending investigation shall submit an amendment according to R9-19-310 that includes the cause of fetal death, using the applicable standards incorporated by reference in R9-19-304(C).

D. Within seven days after receiving the human remains from a fetal death from a medical examiner, a responsible person or funeral director who is responsible for the final disposition of the human remains shall submit to the State Registrar or the local registrar of the registration district in which the fetal death occurred, in a Department-provided format, any information specified in R9-19-305(B)(1)(a) through (f) and (p) through (w) and (2)(a) through (e) that had not been submitted by the medical examiner, according to subsection (B).

E. Upon receiving information submitted according to subsections (B) and, if applicable, (C) and (D), the State Registrar or a local registrar shall:
1. Review the information received;
2. Enter into a fetal death record any missing information received according to subsection (B) or, if applicable (C) or (D); and
3. Within 72 hours, either:
   a. Register the fetal death, or
   b. Notify the applicable person submitting the information according to subsection (B), (C), or (D), as specified in R9-19-103(C).

F. To request the registration of a delayed fetal death record, a medical examiner or tribal law enforcement authority shall submit to the State Registrar, in a Department-provided format, the information required in R9-19-305(B).

Historical Note

Former Section R9-19-306 renumbered as Section R9-19-308, new Section R9-19-306 adopted effective February 20, 1980 (Supp. 80-1). Amended effective July 31, 1989 (Supp. 89-3). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (Supp. 05-1). New Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section R9-19-306 renumbered to R9-19-305; new Section R9-19-306 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-307. Certificate of Birth Resulting in Stillbirth

Upon request by the parent or parents of a stillborn child according to R9-19-317, the State Registrar shall provide the parent or parents with a certificate of birth resulting in stillbirth if the fetal death occurred after a gestational period of at least 20 completed weeks.

Historical Note

Former Section R9-19-307 renumbered as Section R9-19-309, new Section R9-19-307 adopted effective February 20, 1980 (Supp. 80-1). Amended effective July 31, 1989 (Supp. 89-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section R9-19-307 repealed; new Section R9-19-307 renumbered from R9-19-308 and amended by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-308. Disposition-transit Permits

A. A local registrar or deputy local registrar shall collaborate with the State Registrar to ensure that a funeral establishment or responsible person is able to obtain a disposition-transit permit during hours when the office of the local registrar or deputy local registrar is not open for business.

B. A funeral establishment or responsible person shall obtain a disposition-transit permit for human remains from a deceased individual or a fetal death before a final disposition of the human remains is initiated.

1. A disposition-transit permit may list more than one final disposition.
2. A disposition-transit permit issued by the State Registrar or any local registrar or deputy local registrar is valid for each final disposition listed on the disposition-transit permit of the human remains in any registration district in the state or, if listed on the disposition-transit permit, for removal from the state.
3. A crematory shall not accept human remains for cremation unless the accompanying disposition-transit permit specifies cremation as a final disposition.

C. The State Registrar or the local registrar or deputy local registrar of the county where a death or fetal death occurred shall not issue a disposition-transit permit to a funeral establishment or responsible person for the human remains from the deceased individual or the fetal death unless:

1. For the human remains from the deceased individual:
   a. A medical certification of death for the deceased individual, required in R9-19-303(C)(2) or R9-19-304(B), has been submitted to the local registrar of the county where the death occurred; and
   b. The following information is contained in the deceased individual's death record:
      i. The deceased individual's name, sex, and date of birth;
      ii. The date of death;
      iii. The town or city, county, and state where the death occurred;
      iv. The cause of death as listed on the deceased individual's medical certification of death;
      v. The anticipated final disposition of the human remains as specified in R9-19-302(A)(1)(w) through (z);
      vi. If applicable, the name of the funeral establishment; and
      vii. The name of the funeral director or responsible person in charge of the final disposition of the human remains;
2. For the human remains from the fetal death, the following information is contained in the deceased's fetal death record:
   a. The name of the mother;
   b. The date of delivery;
   c. The estimated gestational age of the human remains or, if the gestational age is unknown, the weight of the human remains;
   d. The anticipated final disposition of the human remains, as required in R9-19-305(B)(1)(p) through (s);
   e. If applicable, the name of the funeral establishment; and
   f. The name of the funeral director or responsible person in charge of the final disposition of the human remains;
3. If the information in the death record or fetal death record, as applicable, indicates that the death or fetal death may have occurred under a circumstance in A.R.S. § 11-593(A), the medical examiner has, as applicable:
   a. Signed the medical certification of death;
   b. Submitted the information in R9-19-306(B); or
   c. Notified the State Registrar, local registrar, or deputy local registrar according to R9-19-304(A)(1)(c) or R9-19-306(A)(1)(c); and
4. If cremation is listed as an anticipated final disposition for the human remains, the State Registrar or a local registrar or deputy local registrar has obtained an approval for cremation from the medical examiner of the county where the death or fetal death occurred.

D. A person who submitted the information to request a disposition-transit permit shall not have the right to appeal, as prescribed in A.R.S. Title 41, Chapter 6, Article 6, the State Registrar's determination to deny a request for a disposition-transit permit if the human remains of a deceased individual or from a fetal death have been transported for final disposition before the person who submitted the information receives the written notice specified in R9-19-103(E)(2)(c).

Historical Note

Adopted effective March 30, 1976 (Supp. 76-2). Former Section R9-19-308 renumbered and amended as Section R9-19-310, former Section R9-19-306 renumbered as Section R9-19-308 effective February 20, 1980 (Supp. 80-1). Amended effective July 31, 1989 (Supp. 89-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section R9-19-308 renumbered to R9-19-307; new Section R9-19-308 renumbered from R9-19-302 and amended by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-309. Correcting Information in a Registered Death Record or a Registered Fetal Death Record

A. To request the correction of information submitted by the funeral director or the funeral director's funeral establishment for registration of a deceased individual's death, according to R9-19-303(B) or R9-19-304(E), a funeral director shall submit to the State Registrar or the local registrar of the registration district where the death occurred:

1. A written request to correct the submitted information, on the letterhead paper of the funeral director's funeral establishment or in a Department-provided format, that includes:
   a. The name and license number of the funeral director submitting the request;
   b. Contact information for the funeral director submitting the request, which includes a telephone number or an e-mail address;
   c. The deceased individual's:
      i. Name in the deceased individual's registered death record;
      ii. Sex;
      iii. Date of birth;
      iv. Date of death; and
      v. If known, the state file number;
   d. The specific information in the registered death record to be corrected; and
   e. A written statement attesting to the validity of the submitted correction signed and dated by the funeral director submitting the request for correction; and
2. A copy of the document required in R9-19-303(A).

B. To request the correction of information specified in R9-19-302(A)(3) or (4) in a deceased individual's registered death record, a medical certifier, including a medical examiner or, if applicable, tribal law enforcement authority, who completed the medical certification of death for the deceased individual, according to R9-19-303(C)(2) or R9-19-304(B), shall submit to the State Registrar or the local registrar of the registration district where the death occurred:

1. A written request to correct the submitted information, on the letterhead paper of the medical certifier or in a Department-provided format, that includes:
   a. The name and, as applicable, the health professional license number or the badge number of the medical certifier submitting the request;
   b. Contact information for the medical certifier submitting the request, which includes a telephone number or an e-mail address;
   c. The information in subsection (A)(1)(c);
   d. The specific information in the registered death record to be corrected; and
   e. A written statement attesting to the validity of the submitted correction signed and dated by the medical certifier submitting the request for correction; and
2. An evidentiary document, dated before the date the deceased individual's death was registered, that demonstrates the validity of the submitted correction.

C. In addition to a correction of information in a deceased individual's registered death record allowed under subsection (B), a medical examiner may request the correction of any other information that had been submitted by the medical examiner according to R9-19-304(B) for the deceased individual's death record by submitting to the State Registrar or the local registrar of the registration district where the death occurred:

1. The written request to correct the submitted information in subsection (B)(1), and
2. An evidentiary document required in subsection (B)(2).

D. To request the correction of information in a deceased individual's registered death record, a person who was responsible for the final disposition of the deceased individual's human remains, according to A.R.S. § 36-831, or who provided the information in R9-19-302(A)(1) and (2) to a funeral director, according to R9-19-303(A), shall submit to the State Registrar or the local registrar of the registration district where the death occurred:

1. A written request to correct, in a Department-provided format, that includes:
   a. The following information:
      i. The name of the person submitting the request;
      ii. The person's relationship to the deceased individual;
      iii. Contact information for the person submitting the request, which includes a telephone number or an e-mail address;
      iv. The information required in subsection (A)(1)(c); and
      v. The specific information in the registered death record to be corrected; and
   b. An affidavit attesting to the validity of the submitted correction, signed by the person requesting the correction;
2. An evidentiary document that demonstrates the person's relationship to the deceased individual;
3. An evidentiary document, dated before the date the deceased individual's death was registered, that demonstrates the validity of the submitted correction; and
4. The fee in R9-19-105 for a request to correct the information in a registered death record.

E. To request the correction of information submitted by a hospital, an abortion clinic, a physician, a nurse midwife, or a midwife, according to R9-19-305(B); by a funeral director, according to R9-19-305(D) or R9-19-306(D); by a medical examiner, according to R9-19-306(B); or by a tribal law enforcement authority, as allowed by A.R.S. § 36-325(I), in a registered fetal death record, a designee of the hospital, abortion clinic, physician, nurse midwife, midwife, medical examiner, or tribal law enforcement authority, as applicable, or a funeral director shall submit to the State Registrar or the local registrar of the registration district where the fetal death occurred:

1. A written request to correct the submitted information, on the submitter's letterhead paper or in a Department-provided format, that includes:
   a. The name and, as applicable:
      i. The health care institution license number of the hospital or abortion clinic submitting the request;
      ii. The health professional license number of the physician, nurse midwife, midwife, or medical examiner submitting the request;
      iii. The funeral director's license number; or
      iv. Badge number for the medical certifier for the tribal law enforcement authority submitting the request;
   b. Contact information, which includes a telephone number or an e-mail address for the:
      i. Designee of the hospital, abortion clinic, physician, nurse midwife, midwife, medical examiner, or tribal law enforcement authority submitting the request; or
      ii. Funeral director submitting the request;
   c. Name of the mother of the fetus;
   d. Date of delivery; and
   e. If known, the state file number;
   f. The specific information in the registered fetal death record to be corrected; and
   g. A written statement attesting to the validity of the submitted correction signed and dated by the designee of the hospital, abortion clinic, physician, nurse midwife, midwife, medical examiner, or tribal law enforcement authority, as applicable, or a funeral director submitting the request for correction; and
2. An evidentiary document that demonstrates the validity of the submitted correction.

F. To request the correction of information in a registered fetal death record, a parent of the fetus shall submit, to the State Registrar or the local registrar of the registration district where the fetal death occurred:
1. A written request to correct, in a Department-provided format, that includes:
   a. The following information:
      i. The name of the parent submitting the request;
      ii. Contact information for the parent submitting the request, which includes a telephone number or an e-mail address;
      iii. The information required in subsection (E)(1)(c) through (e); and
      iv. The specific information in the registered fetal death record to be corrected; and
   b. An affidavit attesting to the validity of the submitted correction, signed by the parent requesting the correction;
2. An evidentiary document, dated before the registration of the fetal death, that demonstrates the validity of the submitted correction; and
3. The fee in R9-19-105 for a request to correct the information in a registered fetal death record.

Historical Note

Former Section R9-19-309 renumbered and amended as Section R9-19-311, former Section R9-19-307 renumbered as Section R9-19-309 effective February 20, 1980 (Supp. 80-1). Amended effective July 31, 1989 (Supp. 89-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section R9-19-309 repealed; new Section R9-19-309 renumbered from R9-19-310 and amended by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-310. Amending Information in a Registered Death Record or a Registered Fetal Death Record

A. To request the amendment of information specified in R9-19-302(A)(3) or (4) in a deceased individual's registered death record, a medical certifier, including a medical examiner or, if applicable, tribal law enforcement authority, who completed the medical certification of death for the deceased individual, according to R9-19-303(C)(2) or R9-19-304(B), shall submit to the State Registrar or the local registrar of the registration district where the death occurred:
1. A written request to amend the submitted information, in a Department-provided format, that includes:
   a. The name and, as applicable, the health professional license number or the badge number of the medical certifier submitting the request;
   b. Contact information for the medical certifier submitting the request, which includes a telephone number or an e-mail address;
   c. The following information about the deceased individual:
      i. Name in the deceased individual's registered death record;
      ii. Sex;
      iii. Date of birth;
      iv. Date of death; and
      v. If known, the state file number;
   d. The specific information in the registered death record to be amended; and
   e. A written statement attesting to the validity of the submitted amendment signed by the medical certifier submitting the request for amendment; and
2. An evidentiary document that demonstrates the validity of the submitted amendment.

B. Except as provided in subsections (D) and (F), to request the amendment of any of the information in R9-19-302(A)(1) or (2) in a deceased individual's registered death record, a person shall submit to the State Registrar or the local registrar of the registration district where the death occurred:
1. A request to amend, in a Department-provided format, that includes:
   a. The following information:
      i. The name of the person submitting the request;
      ii. The person's relationship to the deceased individual;
      iii. Contact information for the person submitting the request, which includes a telephone number or an e-mail address;
      iv. The information required in subsection (A)(1)(c); and
      v. The specific information in the registered death record to be amended; and
   b. An affidavit attesting to the validity of the submitted amendment, signed by the person requesting the amendment;
2. An evidentiary document that demonstrates the person's relationship to the deceased individual;
3. An evidentiary document that demonstrates the validity of the submitted amendment; and
4. The fee in R9-19-105 for a request to amend the information in a registered death record.

C. If a person submitting a request to amend the information in a deceased individual's registered death record according to subsection (B) is not the individual listed in the deceased individual's death record as the individual who provided the information about the deceased individual, as specified in R9-19-302(A)(1)(v), the State Registrar or a local registrar or deputy local registrar:
1. Shall notify the individual who provided the information about the deceased individual of the request for an amendment of information in the deceased individual's registered death record, and
2. May request evidentiary documents from the person submitting the request and the individual who provided information about the deceased individual within 10 days after the request to determine the validity of the requested amendment and the information in the deceased individual's registered death record.

D. In addition to an amendment of information in a deceased individual's registered death record allowed under subsection (A), a medical examiner may request the amendment of any other information that had been submitted by the medical examiner according to R9-19-304(B) for the deceased individual's death record by submitting to the State Registrar or the local registrar of the registration district where the death occurred:
1. The written request to amend the submitted information in subsection (A)(1), and
2. An evidentiary document that demonstrates the validity of the submitted amendment.

E. The consulate of a foreign government may request the amendment of any of the information in R9-19-302(A)(1) or (2) in a deceased individual's registered death record on behalf of a family member of the deceased individual if:
1. The family member:
   a. Is a citizen of the foreign country, and
   b. Resides in the foreign country;
2. The deceased individual's medical certification of death was submitted by a medical examiner according to R9-19-304(B); and
3. The consulate provided the medical examiner who submitted the deceased individual's medical certification of death with evidentiary documents that enabled the medical examiner to establish the identity of the deceased individual.

F. To request the amendment of any of the information in R9-19-302(A)(1) or (2) in a deceased individual's registered death record under subsection (E), the consulate of a foreign government shall submit to the State Registrar or the local registrar of the registration district where the death occurred:
1. A written request to amend on the letterhead of the consulate, that includes:
   a. The name and address of the consulate;
   b. The name of and contact information for the consulate's designee for the request, which includes a telephone number or an e-mail address;
   c. The name of the person the consulate is representing;
   d. The relationship of the person in subsection (F)(1)(c) to the deceased individual;
   e. The information required in subsection (A)(1)(c);
   f. The specific information in the registered death record to be amended; and
   g. The dated signature of the consulate's designee;
2. Documentation verifying that the consulate's designee is representing the consulate;
3. A written statement, signed by the consulate's designee, attesting that the consulate has verified the relationship of the person identified according to subsection (F)(1)(c) to the deceased individual;
4. One or more evidentiary documents that demonstrate the validity of the submitted amendment; and
5. The fee in R9-19-105 for a request to amend the information in a registered death record.

G. To request the amendment of information submitted by a hospital, an abortion clinic, a physician, a nurse midwife, or a midwife, according to R9-19-305(B); by a medical examiner, according to R9-19-306(B); or a tribal law enforcement authority, as allowed by A.R.S. § 36-325(I), in a registered fetal death record, a designee of the hospital, abortion clinic, physician, nurse midwife, medical examiner, or tribal law enforcement authority, as applicable, shall submit to the State Registrar or the local registrar of the registration district where the fetal death occurred:
1. A written request to amend, in a Department-provided format, that includes:
   a. The name and, as applicable:
      i. The health care institution license number of the hospital or abortion clinic submitting the request;
      ii. The health professional license number of the physician, nurse midwife, midwife, or medical examiner submitting the

request; or
iii. Badge number for the medical certifier for the tribal law enforcement authority submitting the request;
b. Contact information for the designee of the hospital, abortion clinic, physician, nurse midwife, medical examiner, or tribal law enforcement authority submitting the request, which includes a telephone number or an e-mail address;
c. The following information:
i. Name of the mother of the fetus;
ii. Date of delivery; and
iii. If known, the state file number;
d. The specific information in the registered fetal death record to be amended; and
e. A written statement attesting to the validity of the submitted amendment signed and dated by the designee of the hospital, abortion clinic, physician, nurse midwife, medical examiner, or tribal law enforcement authority submitting the request for amendment; and
2. An evidentiary document that demonstrates the validity of the submitted amendment.

H. To request the amendment of information in a registered fetal death record, a parent of the fetus shall submit, to the State Registrar or the local registrar of the registration district where the fetal death occurred:
1. A request to amend, in a Department-provided format, that includes:
a. The following information:
i. The name of the parent submitting the request;
ii. Contact information for the parent submitting the request, which includes a telephone number or an e-mail address;
iii. The information required in subsection (G)(1)(c); and
iv. The specific information in the registered fetal death record to be amended; and
b. An affidavit attesting to the validity of the submitted amendment, signed by the parent requesting the amendment;
2. Except for an amendment to add the name of the fetus to the registered fetal death record, an evidentiary document that demonstrates the validity of the submitted amendment; and
3. The fee in R9-19-105 for a request to amend the information in a registered fetal death record.

I. The State Registrar or a local registrar shall amend the information in a registered death record or registered fetal death record based on a:
1. Request for amendment, if the State Registrar or local registrar determines, according to R9-19-103, that the information and evidentiary documents in the request for amendment supports the amendment of the deceased individual's registered death record; or
2. Court order.

Historical Note

Adopted effective March 30, 1976 (Supp. 76-2). Former Section R9-19-310 renumbered and amended as Section R9-19-312, former Section R9-19-308 renumbered and amended as Section R9-19-310 effective February 20, 1980 (Supp. 80-1). Editorial correction, Paragraph (2) (Supp. 80-2). Former Section R9-19-310 renumbered to R9-19-312, new R9-19-310 renumbered from R9-19-134, R9-19-135 and R9-19-136 and amended effective July 31, 1989 (Supp. 89-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section R9-19-310 renumbered to R9-19-309; new Section R9-19-310 renumbered from R9-19-311 and amended by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

Clerical error correction made to first subsection reference in subsection (C) at the request of the Department of Health Services, February 8, 2018 (Supp. 17-4).

R9-19-311. Transporting Human Remains into the State for Final Disposition

A. A person transporting a deceased individual's human remains into Arizona from outside of the state shall submit a disposition-transit permit issued by or death certificate registered in the state where the deceased individual's death occurred or the human remains were previously interred that contains the information required in R9-19-302, including the cause of death, to the local registrar or deputy local registrar of the registration district where final disposition of the human remains in Arizona are anticipated or the State Registrar.

B. Upon receipt of a disposition-transit permit issued by or death certificate registered in another state that contains the information required in R9-19-302, including the cause of death, a local registrar, a deputy local registrar, or the State Registrar shall issue a disposition-transit permit using the information on the other state's disposition-transit permit or death certificate. If the human remains were previously disinterred, the local registrar, deputy local registrar, or State Registrar shall document "disinterred" on the disposition-transit permit.

Historical Note

Former Section R9-19-311 renumbered as Section R9-19-313, former Section R9-19-309 renumbered and amended as Section R9-19-311 effective February 20, 1980 (Supp. 80-1). Former Section R9-19-311 renumbered to R9-19-313, new Section R9-19-311 renumbered from Section R9-19-137 and amended effective July 31, 1989 (Supp. 89-3). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (Supp. 05-1). New Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section R9-19-311 renumbered to R9-19-310; new Section R9-19-311 renumbered from R9-19-312 and amended by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-312. Disinterment-reinterment Permits

A. Except as provided in A.R.S. § 36-327, before a person disinters the human remains of a deceased individual or a fetal death, the person shall:
1. Obtain:
   a. Written authorization for the disinterment from the:
      i. Deceased individual's family member or members who have the highest priority according to A.R.S. § 36-327(A), or
      ii. Parent of the fetus; or
   b. A court order authorizing the disinterment;
2. If the disinterred human remains are to be cremated, obtain approval for the cremation from the medical examiner of the registration district where the human remains are interred; and
3. Submit to a local registrar, a deputy local registrar, or the State Registrar to obtain a disinterment-reinterment permit:
   a. The following information in a Department-provided format:
      i. For the human remains of a deceased individual:
         (1) The name, age, sex, and race of the deceased individual; and
         (2) The date and place of death;
      ii. For the human remains of a fetal death, the name of the mother and date of delivery;
      iii. The name of the cemetery or the location where the human remains are buried;
      iv. The name of the funeral director in charge of the disinterment;
      v. If applicable, the name or names of the family member or members who authorized the disinterment, as required in subsection (A)(1)(a);
      vi. The name of the cemetery or the location where it is anticipated that the human remains will be reinterred or the crematory where the human remains will be cremated; and
      vii. The anticipated date of the reinterment or cremation; and
   b. If applicable, a copy of the court order required in subsection (A)(1)(b) or the medical examiner's approval of cremation required in subsection (A)(2).

B. The funeral director who is in charge of the disinterment shall:
1. Maintain a copy of the written authorization in subsection (A)(1)(a) or court order for at least 10 years after the date on the evidentiary document, and
2. Provide a copy of the written authorization or court order to the State Registrar for review within 48 hours after the State Registrar's request.

C. A person who submitted the information to request a disinterment-reinterment permit shall not have the right to appeal, as prescribed in A.R.S. Title 41, Chapter 6, Article 6, the State Registrar's determination to deny a request for a disinterment-reinterment permit if the human remains of a deceased individual or from a fetal death have been disinterred before the person who submitted the information receives the written notice specified in R9-19-103(E)(2)(c).

Historical Note

Amended effective March 30, 1976 (Supp. 76-2). Former Section R9-19-312 renumbered as Section R9-19-316, former Section R9-19-310 renumbered and amended as Section R9-19-312 effective February 20, 1980 (Supp. 80-1). Former Section R9-19-312 renumbered to R9-19-314, new Section R9-19-312 renumbered from Section R9-19-310 and amended effective July 31, 1989 (Supp. 89-3). Section recodified to R9-8-1102 at 11 A.A.R. 3578, effective September 2, 2005 (Supp. 05-4). New Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section R9-19-312 renumbered to R9-19-311; new Section R9-19-312 renumbered from R9-19-313 and amended by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-313. Duties of Persons in Charge of Place of Final Disposition

A person in charge of a place of final disposition in this state shall:
1. Maintain a copy of the following documents at the place of final disposition for at least five years after the issue date on the document:
   a. The disposition-transit permit for each final disposition of human remains, and
   b. The disinterment-reinterment permit for each disinterment or reinterment of human remains; and
2. Provide a copy of the document to the State Registrar for review within 48 hours after the State Registrar's request.

Historical Note

Amended effective March 30, 1976 (Supp. 76-2). Former Section R9-19-313 renumbered as Section R9-19-317, former Section R9-19-311 renumbered as Section R9-19-313 effective February 20, 1980 (Supp. 80-1). Former Section R9-19-313 renumbered to R9-19-315, new Section R9-19-313 renumbered from Section R9-19-311 and amended effective July 31, 1989 (Supp. 89-3). Section recodified to R9-6-389 at 11 A.A.R. 3578, effective September 2, 2005 (Supp. 05-4). New Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section R9-19-313 renumbered to R9-19-312; new Section R9-19-313 renumbered from R9-19-314 and amended by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-314. Eligibility for a Certified Copy of a Certificate of Death Registration

A. A certified copy of a certificate of death registration contains, as available, the information specified in R9-19-302(A)(1) and (3).

B. The following are eligible to receive a certified copy of a deceased individual's certificate of death registration:
1. A funeral director representing one of the following in a final disposition of the deceased individual's human remains, within 12 months after the registration of the deceased individual's death:
   a. The deceased individual through a prearranged funeral agreement, as defined in A.R.S. § 32-1301;
   b. The deceased individual's spouse;
   c. The deceased individual's parent, grandparent, or adult child, grandchild, brother, or sister; or
   d. Another person who is responsible for the final disposition of the deceased individual's human remains according to A.R.S. § 36-831;
2. A designee of a funeral director in subsection (B)(1);
3. The surviving spouse of the deceased individual;
4. A parent or grandparent of the deceased individual;
5. An adult child, grandchild, brother, or sister of the deceased individual;
6. A person designated in a power of attorney, established by a person eligible according to subsection (B)(3), (4), or (5);
7. Another person who is responsible for the final disposition of the deceased individual's human remains according to A.R.S. § 36-831;
8. A person named in the deceased individual's last will and testament as the executor of the deceased individual's estate;
9. A person named in the deceased individual's last will and testament as a beneficiary of the deceased individual's estate;
10. A person named as a beneficiary of a life insurance policy on the deceased individual;
11. A person designated in a court order to receive a certified copy of the deceased individual's certificate of death registration;
12. A person authorized in writing to receive a certified copy of the deceased individual's certificate of death registration by a person who is eligible to receive a certified copy of the deceased individual's certificate of death registration according to subsection (B)(3), (4), (5), or (6);
13. An insurance company with which the deceased individual had a policy;
14. A bank, a credit union, a mortgage lender, or another financial institution with which the deceased individual had an account or other business relationship;
15. A hospital or other health care institution processing a claim against the deceased individual's estate;
16. Another person having a claim against the deceased individual's estate;
17. An attorney representing a person who is eligible to receive a certified copy of the deceased individual's certificate of death registration;
18. The consulate of a foreign government representing a person who:
    a. Is eligible to receive a certified copy of the deceased individual's certificate of death registration, according to subsection (B)(3), (4), (5), or (6);
    b. Is a citizen of the foreign country; and
    c. Resides in the foreign country; and
19. A governmental agency processing a financial claim, a governmental benefit application, or another form of compensation on behalf of the deceased individual or the deceased individual's estate or having another official purpose for a certified copy of the deceased individual's certificate of death registration.

Historical Note

Former Section R9-19-314 renumbered and amended as Section R9-19-318, new Section R9-19-314 adopted effective February 20, 1980 (Supp. 80-1). Former Section R9-19-314 renumbered to R9-19-316, new Section R9-19-314 renumbered from Section R9-19-312 and amended effective July 31, 1989 (Supp. 89-3). Section recodified to R9-8-1103 at 11 A.A.R. 3578, effective September 2, 2005 (Supp. 05-4). New Section made by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). Section R9-19-314 renumbered to R9-19-313; new Section R9-19-314 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-315. Requesting a Certified Copy of a Certificate of Death Registration

A. A funeral director eligible to receive a certified copy of a deceased individual's certificate of death registration according to R9-19-314(B)(1) or the funeral director's designee according to R9-19-314(B)(2) may request a certified copy of the deceased individual's certificate of death registration by submitting to the State Registrar or a local registrar:
1. A written request, on the letterhead of the funeral establishment or in a Department-provided format, that includes:
   a. The name and license number of the funeral director;
   b. Contact information for the funeral director, which includes a telephone number or an e-mail address;
   c. If applicable, the name and contact information for the funeral director's designee, which includes a telephone number or an e-mail address;
   d. The name and address of the funeral director's funeral establishment;
   e. The deceased individual's:
      i. Name in the deceased individual's registered death record,
      ii. Date of birth, and
      iii. Date of death;
   f. If known, the:

i. Sex of the deceased individual,
ii. State file number,
iii. Town or city of the deceased individual's death,
iv. County of the deceased individual's death,
v. Place of the deceased individual's death, and
vi. Deceased individual's Social Security Number;

g. The number of certified copies of the individual's certificate of death registration being requested; and
h. The dated signature of the funeral director submitting the request and, except as provided in subsection (B), either:
i. With the funeral director's signature notarized; or
ii. Accompanied by a copy of a valid, government-issued form of photo identification for the funeral director that contains the funeral director's name and signature;

2. Except when the name of the funeral establishment specified according to subsection (A)(1)(d) is included in the deceased individual's registered death record, a copy of documentation demonstrating that the funeral director or the funeral director's funeral establishment has a valid contract to furnish funeral goods or services, as defined in A.R.S. § 32-1301, related to a final disposition of the deceased individual's human remains; and
3. The fee in R9-19-105 for each certified copy of the deceased individual's certificate of death registration being requested.

B. A funeral director or the funeral director's designee requesting a certified copy of a deceased individual's certificate of death registration according to subsection (A) may submit the written request in subsection (A)(1) with the funeral director's or the funeral director's designee's signature, if the funeral director or the funeral director's designee has submitted to the State Registrar or a local registrar:

1. A copy of a valid, government-issued form of photo identification of the funeral director or the funeral director's designee, as applicable; and
2. Documentation verifying current employment by the funeral establishment specified according to subsection (A)(1)(d), dated within the 12 months before the deceased individual's death was registered.

C. A person eligible to receive a certified copy of a deceased individual's certificate of death registration according to R9-19-314(B)(3) through (12) may request a certified copy of the deceased individual's certificate of death registration by submitting to the State Registrar or a local registrar:

1. A written request, in a Department-provided format, that includes:
a. The name and mailing address of the person submitting the request;
b. Contact information for the person submitting the request, which includes a telephone number or an e-mail address;
c. The person's relationship with the deceased individual that makes the person eligible to receive a certified copy of the deceased individual's certificate of death registration;
d. The deceased individual's:
i. Name in the deceased individual's registered death record,
ii. Date of birth, and
iii. Date of death;
e. If known, the:
i. Sex of the deceased individual,
ii. State file number,
iii. Town or city of the deceased individual's death,
iv. County of the deceased individual's death,
v. Place of the deceased individual's death,
vi. Funeral establishment or person responsible for the final disposition of the deceased individual's human remains, and
vii. Deceased individual's Social Security Number;
f. Whether the certified copy of the deceased individual's certificate of death registration is to be used in a claim against the U.S. government for one of the following and, if so, which of the following:
i. Social Security or similar retirement benefits;
ii. Allotments to dependents of military personnel on active service;
iii. Pensions to veterans of the armed forces or their survivors;
iv. Payments of U.S. government or NSLI life insurance proceeds; or
v. Any other claim that, as determined by the State Registrar, meets the general requirements of A.R.S. § 39-122(A);
g. The number of certified copies of the deceased individual's certificate of death registration being requested; and
h. The dated signature of the person submitting the request, either:
i. With the person's signature notarized; or
ii. Accompanied by a copy of a valid, government-issued form of photo identification for the person that contains the person's name and signature;
2. One or more evidentiary documents demonstrating that the person is eligible to receive a certified copy of the deceased individual's certificate of death registration; and
3. Except as provided in A.R.S. § 39-122(A), the fee in R9-19-105 for each certified copy of the deceased individual's certificate of death registration being requested.

D. The following provides examples of documentation that meets the requirement in subsection (C)(2):

1. For the surviving spouse of the deceased individual whose name is included in the deceased individual's registered death record, a copy of the marriage certificate for the deceased individual and the spouse;
2. For a person who is the deceased individual's parent, grandparent, or adult child, grandchild, brother, or sister:
   a. Either:
      i. A copy of one or more certificates of birth registration or certificates of death registration that show the person's relationship to the deceased individual or, if a parent's name is included in the deceased individual's registered birth record or registered death record, the deceased individual's parent; or
      ii. For births or deaths registered in Arizona, information about the person or a related person whose birth or death was registered in Arizona, such as the person's name, date of birth, or parent's name and date of birth or date of death, that would enable the Department to locate the person's or related person's registered birth record or registered death record; and
   b. If applicable, a copy of a court order of adoption, certified by the issuing court, or a certificate of adoption with a court seal, for the deceased individual or the deceased individual's parent or adult child, grandchild, brother, or sister that shows the person's relationship to the deceased individual;
3. For a person designated in a power of attorney, established by a person eligible according to R9-19-314(B)(3), (4), or (5):
   a. A copy of the power of attorney; and
   b. Documentation, as specified in subsection (D)(1) or (2), demonstrating that the person is eligible, according to R9-19-314(B)(3), (4), or (5), to receive a certified copy of the deceased individual's certificate of death registration;
4. For another responsible person, a copy of documentation demonstrating that the responsible person meets the definition of "responsible person" in A.R.S. § 36-301;
5. For a person named in the deceased individual's last will and testament as the executor of the deceased individual's estate or as a beneficiary of the deceased individual's estate, a copy of the deceased individual's last will and testament;
6. For a person named as a beneficiary of a life insurance policy on the deceased individual, a copy of the life insurance policy for the deceased individual or other documentation from the company that issued the life insurance policy specifying the person as a beneficiary;
7. For a person named in a court order to receive a certified copy of the deceased individual's certificate of death registration, a copy of the court order, certified by the issuing court; and
8. For a person authorized in writing to receive a certified copy of the deceased individual's certificate of death registration by a person who is eligible to receive a certified copy of the deceased individual's certificate of death registration according to R9-19-314(B)(3), (4), (5), or (6):
   a. A written statement from the person authorized in writing to receive a certified copy of the deceased individual's certificate of death registration, that includes:
      i. The deceased individual's name;
      ii. The name of and contact information for the person authorized to receive a certified copy of the deceased individual's certificate of death registration;
      iii. The name of and contact information for the person who is eligible to receive a certified copy of the deceased individual's certificate of death registration according to R9-19-314(B)(3), (4), (5), or (6) and who authorized the person in subsection (D)(8)(a)(ii) to receive a certified copy of the deceased individual's certificate of death registration; and
      iv. The signature of the person authorized to receive a certified copy of the deceased individual's certificate of death registration;
   b. The notarized signature of the person authorized to receive a certified copy of the deceased individual's certificate of death registration or the copy of a valid, government-issued form of photo identification that contains the name and signature of the person authorized to receive a certified copy of the deceased individual's certificate of death registration, as required in subsection (C)(1)(h);
   c. A copy of documentation demonstrating that the person specified according to subsection (D)(8)(a)(iii) is eligible to receive a certified copy of the deceased individual's certificate of death registration; and
   d. A copy of documentation demonstrating that the person specified according to subsection (D)(8)(a)(ii) is authorized by the person specified according to subsection (D)(8)(a)(iii) to receive a certified copy of the deceased individual's certificate of death registration.

E. An insurance company with which the deceased individual had a policy, or a bank, a credit union, a mortgage lender, or another financial institution with which the deceased individual had an account or other business relationship may request a certified copy of a deceased individual's certificate of death registration by submitting to the State Registrar or a local registrar:

1. A written request, on the letterhead paper of the insurance company, bank, credit union, mortgage lender, or other financial institution or in a Department-provided format, that includes:
   a. The name and address of the insurance company, bank, credit union, mortgage lender, or other financial institution;
   b. The name of and contact information for the insurance company's, bank's, credit union's, mortgage lender's, or other financial institution's designee for the request, which includes a telephone number or an e-mail address;
   c. The information in subsections (C)(1)(d) and (e);
   d. If applicable, a description of the policy the deceased individual had with the insurance company;
   e. If applicable, a description of the account or other business relationship the deceased individual had with the bank, credit union, mortgage lender, or other financial institution;

f. The reason the insurance company, bank, credit union, mortgage lender, or other financial institution is requesting a certified copy of the deceased individual's certificate of death registration; and
g. The dated signature of the insurance company's, bank's, credit union's, mortgage lender's, or other financial institution's designee, either:
i. With the designee's signature notarized; or
ii. Accompanied by a copy of a valid, government-issued form of photo identification for the designee that contains the designee's name and signature;

2. A copy of documentation verifying that the designee is representing the insurance company, bank, credit union, mortgage lender, or other financial institution;
3. As applicable, a copy of documentation demonstrating that the deceased individual had a policy with the insurance company or an account or other business relationship with the bank, credit union, mortgage lender, or other financial institution; and
4. The fee in R9-19-105 for the certified copy of the deceased individual's certificate of death registration.

F. A hospital or other health care institution processing a claim against the deceased individual's estate may request a certified copy of a deceased individual's certificate of death registration by submitting to the State Registrar or a local registrar:

1. A written request, on the letterhead paper of the hospital or other health care institution or in a Department-provided format, that includes:
a. The name and address of the hospital or other health care institution;
b. The name of and contact information for the hospital's or other health care institution's designee for the request, which includes a telephone number or an e-mail address;
c. The information in subsections (C)(1)(d) and (e);
d. A description of the claim against the deceased individual's estate;
e. The reason the hospital or other health care institution is requesting a certified copy of the deceased individual's certificate of death registration; and
f. The dated signature of the hospital's or other health care institution's designee, either:
i. With the designee's signature notarized; or
ii. Accompanied by a copy of a valid, government-issued form of photo identification for the designee that contains the designee's name and signature;
2. A copy of documentation verifying that the designee is representing the hospital or other health care institution;
3. A copy of documentation demonstrating that the hospital or other health care institution has a claim against the deceased individual's estate; and
4. The fee in R9-19-105 for the certified copy of the deceased individual's certificate of death registration.

G. Another person having a court order demonstrating a claim against the deceased individual's estate may request a certified copy of a deceased individual's certificate of death registration by submitting to the State Registrar or a local registrar:

1. A written request from the person having a court order demonstrating a claim against the deceased individual's estate, on the person's letterhead paper or in a Department-provided format, that includes:
a. The name of and contact information for the person having a court order demonstrating a claim against the deceased individual's estate, which includes a telephone number or an e-mail address;
b. If the person is not an individual, the name of and contact information for the person's designee for the request, which includes a telephone number or an e-mail address;
c. The information in subsections (C)(1)(d) and (e);
d. A description of the claim against the deceased individual's estate;
e. The reason the person is requesting a certified copy of the deceased individual's certificate of death registration; and
f. The dated signature of the person submitting the request or, if applicable, the person's designee, either:
i. With the person's or designee's signature notarized; or
ii. Accompanied by a copy of a valid, government-issued form of photo identification for the person or designee, as applicable, that contains the person's or designee's name and signature;
2. If applicable, a copy of documentation verifying that the designee is representing the person;
3. A copy of the court order demonstrating that the person has a claim against the deceased individual's estate; and
4. The fee in R9-19-105 for the certified copy of the deceased individual's certificate of death registration.

H. An attorney representing a person who is eligible to receive a certified copy of the deceased individual's certificate of death registration may request a certified copy of a deceased individual's certificate of death registration by submitting to the State Registrar or a local registrar:

1. A written request, on the attorney's letterhead paper or in a Department-provided format, that includes:
a. The attorney's name and state bar number;
b. Contact information for the attorney, which includes a telephone number or an e-mail address;
c. The name of the person the attorney is representing;
d. The relationship of the person in subsection (H)(1)(c) to the deceased individual;
e. The information in subsections (C)(1)(d) and (e);
f. If the attorney is representing a person in R9-19-314(B)(3) through (12), the number of certified copies of the individual's certificate of death registration being requested; and
g. The dated signature of the attorney, either:
i. With the attorney's signature notarized; or

ii. Accompanied by a copy of a valid, government-issued form of photo identification for the attorney that contains the attorney name and signature;

2. A copy of the attorney's retainer agreement with the person who is eligible to receive a certified copy of the deceased individual's certificate of death registration;
3. The applicable documentation demonstrating the eligibility of the person specified according to subsection (H)(1)(c) to receive a certified copy of the deceased individual's certificate of death registration; and
4. The fee in R9-19-105 for each certified copy of the deceased individual's certificate of death registration being requested.

I. The consulate of a foreign government eligible to receive a certified copy of a deceased individual's certificate of death registration according to R9-19-314(B)(18) may request a certified copy of a deceased individual's certificate of death registration on behalf of one of the persons identified in R9-19-314(B)(3), (4), (5) or (6) by submitting to the State Registrar or a local registrar:

1. A written request, on the letterhead of the consulate, that includes:
   a. The name and address of the consulate;
   b. The name of and contact information for the consulate's designee for the request, which includes a telephone number or an e-mail address;
   c. The name of the person the consulate is representing;
   d. The relationship of the person in subsection (I)(1)(c) to the deceased individual;
   e. The information required in subsection (C)(1)(d) and (e);
   f. The reason the consulate is requesting a certified copy of the individual's certificate of death registration;
   g. The number of certified copies of the deceased individual's certificate of death registration being requested; and
   h. The dated signature of the consulate's designee;
2. Documentation verifying that the consulate's designee is representing the consulate;
3. A written statement, signed by the consulate's designee, attesting that the consulate has verified that the person identified according to subsection (I)(1)(c) is eligible under R9-19-314(B)(3), (4), (5) or (6) to receive a certified copy of the deceased individual's certificate of death registration; and
4. The fee in R9-19-105 for each certified copy of the deceased individual's certificate of death registration being requested.

J. A governmental agency processing a financial claim, a governmental benefit application, or another form of compensation on behalf of a deceased individual or the deceased individual's estate or having another official purpose for a certified copy of the deceased individual's certificate of death registration may request a certified copy of the deceased individual's certificate of death registration by submitting to the State Registrar or a local registrar:

1. A written request, on the governmental agency's letterhead paper or in a Department-provided format, that includes:
   a. The name and address of the governmental agency;
   b. The information required in subsection (C)(1)(d) and (e);
   c. The name of and contact information for the governmental agency's designee for the request, which includes a telephone number or an e-mail address;
   d. A description of the:
      i. Action the governmental agency is taking on behalf of the deceased individual or the deceased individual's estate, or
      ii. Official purpose for which the governmental agency needs a certificate of the individual's death registration;
   e. The reason the governmental agency is requesting a certified copy of the individual's certificate of death registration; and
   f. The dated signature of the governmental agency's designee, accompanied by a copy of the designee's identification badge from the governmental agency verifying that the designee is an employee of the governmental agency; and
2. Unless the governmental agency is an agency as defined in A.R.S. § 41-1001, the fee in R9-19-105 for the certified copy of the deceased individual's certificate of death registration.

Historical Note

Former Section R9-19-315 renumbered as Section R9-19-319, new Section R9-19-315 adopted effective February 20, 1980 (Supp. 80-1). Former Section R9-19-315 renumbered to R9-19-317, new Section R9-19-315 renumbered from Section R9-19-313 and amended effective July 31, 1989 (Supp. 89-3). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (Supp. 05-1). New Section R9-19-315 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

Amended by final expedited rulemaking at 26 A.A.R. 1534, with an immediate effective date of July 7, 2020 (Supp. 20-3).

R9-19-316. Requesting a Noncertified Copy of a Certificate of Death Registration

A. A noncertified copy of a certificate of death registration contains, as available, the information specified in R9-19-302(A)(1) and (3).

B. Except as provided in subsection (C) or (D), a person who is conducting research may request a noncertified copy of a deceased individual's certificate of death registration by submitting to the State Registrar:

1. A written request, in a Department-provided format, that includes:
   a. The name and mailing address of the person submitting the request;
   b. Contact information for the person submitting the request, which includes a telephone number or an e-mail address;
   c. The reason the person is requesting a noncertified copy of the deceased individual's certificate of death registration;
   d. The information required in R9-19-315(C)(1)(d) and (e); and
   e. The dated signature of the person submitting the request;

2. Documentation from the Department's Human Subjects Review Board that the person is eligible to receive a noncertified copy of the deceased individual's certificate of death registration; and
3. The fee in R9-19-105 for the noncertified copy of the deceased individual's certificate of death registration.

C. A person who is a family member, including a niece or nephew, of a deceased individual, who is conducting research for genealogical purposes and who is of legal age, may request a noncertified copy of the deceased individual's certificate of death registration by submitting to the State Registrar or a local registrar:

1. A written request, in a Department-provided format, that includes:
   a. The name and mailing address of the person submitting the request;
   b. Contact information for the person submitting the request, which includes a telephone number or an e-mail address;
   c. The person's relationship with the deceased individual that makes the person eligible to receive a noncertified copy of the deceased individual's certificate of death registration;
   d. The information required in R9-19-315(C)(1)(d) and (e);
   e. A statement that the person is conducting research for genealogical purposes; and
   f. The dated signature of the person submitting the request, either:
      i. With the person's signature notarized; or
      ii. Accompanied by a copy of a valid, government-issued form of photo identification for the person that contains the person's name and signature;
2. Documentation demonstrating that the person is eligible to receive a noncertified copy of the deceased individual's certificate of death registration that may include either:
   a. A copy of one or more certificates of birth registration or certificates of death registration that show the person's relationship to the deceased individual or, if a parent's name is included in the deceased individual's registered birth record or registered death record, the deceased individual's parent; or
   b. For births or deaths registered in Arizona, information about the person or a related person whose birth or death was registered in Arizona, such as the person's name, date of birth, or parent's name and date of birth or date of death, that would enable the Department to locate the person's or related person's registered birth record or registered death record; and
3. The fee in R9-19-105 for the noncertified copy of the deceased individual's certificate of death registration.

D. A governmental agency processing a financial claim, a governmental benefit application, or another form of compensation on behalf of a deceased individual or the deceased individual's estate or having another official purpose for a noncertified copy of the deceased individual's certificate of death registration may request a noncertified copy of the deceased individual's certificate of death registration by submitting to the State Registrar or a local registrar:

1. A written request, on the governmental agency's letterhead paper or in a Department-provided format, that includes:
   a. The name and address of the governmental agency;
   b. The information required in R9-19-315(C)(1)(d) and (e);
   c. The name of and contact information for the governmental agency's designee for the request, which includes a telephone number or an e-mail address;
   d. A description of the:
      i. Action the governmental agency is taking on behalf of the deceased individual or the deceased individual's estate, or
      ii. Official purpose for which the governmental agency needs a certificate of the individual's death registration;
   e. The reason the governmental agency is requesting a noncertified copy of the individual's certificate of death registration; and
   f. The dated signature of the governmental agency's designee, accompanied by a copy of the designee's identification badge from the governmental agency verifying that the designee is an employee of the governmental agency; and
2. Unless the governmental agency is an agency as defined in A.R.S. § 41-1001, the fee in R9-19-105 for the noncertified copy of the deceased individual's certificate of death registration.

Historical Note

Former Section R9-19-316 renumbered as Section R9-19-320, former Section R9-19-312 renumbered as Section R9-19-316 effective February 20, 1980 (Supp. 80-1). Former Section R9-19-316 renumbered to R9-19-318, new Section R9-19-316 renumbered from Section R9-19-314 and amended effective July 31, 1989 (Supp. 89-3). Section repealed by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). New Section R9-19-316 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

R9-19-317. Obtaining a Certificate of Fetal Death Registration or a Certificate of Birth Resulting in Stillbirth

A. A certificate of fetal death registration contains, as available, the information specified in R9-19-305(B)(1).

B. A certificate of birth resulting in stillbirth contains, as available, the information specified in R9-19-305(B)(1)(a) through (k) and (n).

C. A parent of a fetus or a person who is of legal age and who is authorized by a parent of the fetus may request a certified or noncertified copy of a certificate of fetal death registration for the fetus by submitting to the State Registrar or a local registrar:

1. A written request, in a Department-provided format, that includes:
   a. The name and mailing address of the person submitting the request;
   b. Contact information for the person submitting the request, which includes a telephone number or an e-mail address;
   c. Whether the person submitting the request is a parent of a fetus or a person authorized by a parent of the fetus;
   d. The following information:

i. The name of the mother in the registered fetal death record, and
ii. The date of delivery;

e. If known, the:
i. State file number,
ii. Town or city of the fetal death, and
iii. County of the fetal death;

f. If the person submitting the request is a parent of the fetus, whether the person would like to receive a certified copy of a certificate of birth resulting in stillbirth for the fetus;

g. The number being requested of:
i. Certified copies of a certificate of fetal death registration,
ii. Noncertified copies of a certificate of fetal death registration, and
iii. Certified copies of a certificate of birth resulting in stillbirth; and

h. The dated signature of the person submitting the request, either:
i. With the person's signature notarized; or
ii. Accompanied by a copy of a valid, government-issued form of photo identification for the person that contains the name and signature of the person;

2. For a parent whose name is not included in the registered fetal death record, documentation demonstrating that the person submitting the request is a parent of the fetus;

3. For a person authorized by a parent of the fetus to receive a certified or noncertified copy of the certificate of fetal death registration for the fetus:
a. Documentation demonstrating that the person submitting the request is authorized to receive a certified or noncertified copy of a certificate of fetal death registration for the fetus; and
b. Documentation demonstrating that the individual authorizing the person submitting the request to receive a certified or noncertified copy of a certificate of fetal death registration for the fetus is a parent of the fetus; and

4. The applicable fee in R9-19-105 for each certificate of being requested.

Historical Note

Former Section R9-19-317 renumbered as Section R9-19-321, former Section R9-19-313 renumbered as Section R9-19-317 effective February 20, 1980 (Supp. 80-1). Former Section R9-19-317 renumbered to R9-19-319, new Section R9-19-317 renumbered from Section R9-19-315 and amended effective July 31, 1989 (Supp. 89-3). Section repealed by final rulemaking at 12 A.A.R. 4387, effective January 6, 2007 (Supp. 06-4). New Section R9-19-317 made by final exempt rulemaking under Laws 2015, Ch. 197, § 2, at 22 A.A.R. 1782, effective October 1, 2016 (Supp. 16-2).

What parts of the rules in Chapter 19 Vital Records, do you believe are effective?

R9-19-208 C – Amending Information in a Registered Birth Record

How can the rules in Chapter 19, vital records be improved?

1**. R9-19-101 (14) definitions**.

14. "Government-issued form of photo identification" means:
ii. U.S. Passport Card,
v. U.S. Military Identification Card;
These two identification cards do not contain a signature on the ID card thus conflicting with R9-19-211, R9-19-212, R9-19-315, R9-19-316. R9-19-317, where it states, "Accompanied by a copy of a valid, government-issued form of photo identification for the person contains the name and signature of the person."

While Maricopa County does believe that these two forms ID should be acceptable, they do not currently meet the ADHS requirements in other areas of this chapter. Staff are frequently challenged by holders of these two forms of ID. Might additional consideration be given to these two ID's?

Modifications to R9-19-101 definitions.

R9-19-207 B(3)(b) Allows for correcting a birth record with either the worksheet or a part of the individual's or mother's individual medical record while R9-19-208 C allows for amending the birth with only a part of the individual's or mother's individual medical record. Both referred to R9-19-201 A (3) or (4). Need further clarification to determine hospital correction vs hospital amendment.

R9-19-212 (E)(2), R9-19-316 D (2) Unless the governmental agency as defined in ARS 41-1001, the fee in R9-19-105 for the noncertified copy of the individual's certificate of the birth or death registration. (Seeking modification to these two rules)

Maricopa County is seeking consideration for a rule revision that prevents local registration districts from charging themselves modeling the current practice amongst the Bureau of Vital Records, ADHS and all other state agencies. The effort to pay itself is not an effective use of Maricopa County's resources.

If rule can be modified to prevent local registration districts from charging themselves, Maricopa County would be supportive of the ADHS proposed non-certified copy fee. Otherwise, Maricopa County proposes no increase to this service fee.

R9-19-105 Fee Schedule

Maricopa County is proposing administering the fee increases in two phases to achieve the current proposed service fees to the consumer in obtaining an Arizona vital record. The first fee schedule changes are those being proposed by ADHS. Included are two proposals with the transitional fee schedule incorporated in phased tier (Phase I and Phase II).

In addition to the new fee schedule, Maricopa County requests the fee increases be divided equally amongst the ADHS, and county colleagues mandated to perform vital records tasks from issuing certified copies to amending and correcting a vital record as well as all the various functions that must occur locally in support of these mandated services for which there is no direct funding source. Additionally, multiple fee services are solely under the ADHS authority.

Maricopa County is also seeking consideration for a rule revision that prevents local registration districts from charging themselves modeling the current practice amongst the Bureau of Vital Records, ADHS and all other state agencies. The effort to pay itself is not an effective use of Maricopa County's resources.

R9-19-105. Phase 1 Fee Schedule (Proposed by Maricopa County)

A. When a fee is specified in this Chapter, the following fees apply:

1. For a noncertified copy of a certificate, ~~$5.00~~ $4.00;

2. For a certified copy of a:

a. Certificate of birth registration, ~~$19.00~~ $28.00;

b. Certificate of delayed birth registration, ~~$19.00~~ $28.00;

c. Certificate of death registration, ~~$19.00~~ $28.00;

d. Certificate of delayed death registration, ~~$19.00~~ $28.00;

e. Certificate of fetal death registration, ~~$19.00~~ $28.00;

f. Certificate of birth resulting in stillbirth, ~~$19.00~~ $28.00;

g. Certificate of delayed fetal death registration, ~~$19.00~~ $28.00; or

h. Certificate of no record, ~~$19.00 $28.00~~;

3. For a search to verify birth or death data for statistical or research purposes according to A.R.S. § 36-342(A), ~~$5.00~~ $4.00;

4. For a request to establish a:

a. Delayed birth record for an individual and register the individual's birth, ~~$19.00~~ $28.00;

b. Registered record of foreign birth for an adopted individual, ~~$19.00~~ $28.00;

c. Delayed death record for a deceased individual and register the deceased individual's death, ~~$19.00~~ $28.00;

d. Delayed fetal death record for a fetal death and register the fetal death, ~~$19.00~~ $28.00; or

e. Death record or delayed death record for a presumptive death under A.R.S. § 36-325 or 36-328, ~~$19.00~~ $28.00; and

5. For a request to amend or correct information in a:

a. Registered birth record, ~~$29.00~~ $38.00;

b. Registered death record, ~~$29.00~~ $38.00; or

c. Registered fetal death record, ~~$29.00~~ $38.00.

B. If a request submitted and fee paid, as prescribed in subsection (A)(4) or (5), results in the registration of a birth, death, or fetal death or a correction or amendment to a registered birth record, registered death record, or registered fetal death record, the Department shall provide to the person submitting the request and paying the fee a certified copy of the applicable certificate for the registered, corrected, or amended record.

C. Except as provided in subsection (E), the Department shall not charge an agency, as defined in A.R.S. § 41-1001, any fee in this Section.

D. In addition to the fees charged in subsection (A), the Department shall assess the following surcharges:

1. As required in A.R.S. § 36-341(B), for a certified copy of a certificate of birth registration or certificate of delayed birth registration, $1.00; and

2. As required in A.R.S. § 36-341(E), for a certified copy of a certificate of death registration, certificate of delayed death registration, certificate of fetal death registration, or certificate of delayed fetal death registration, $1.00;

E. A local registrar shall pay the following surcharges to the Department for copies issued by the local registrar:

1. As required in A.R.S. § 36-341(B), for a certified copy of a certificate of birth registration or certificate of delayed birth registration, $1.00;

2. As required in A.R.S. § 36-341(E), for a certified copy of a certificate of death registration, certificate of delayed death registration, certificate of fetal death registration, or certificate of delayed fetal death registration, $1.00;

3. For system access for each certified copy of a certificate; ~~$4.00~~ $8.50 amend or correct ~~$4.00~~ $8.50 (increase difference split 50/50 with county); and

4. For system access for each noncertified copy of a certificate, $1.00

Phase I Fee Schedule includes a breakdown of the first increase consideration. The fees outlined would incorporate an increase in the $4 system access fee along with the $1.00 surcharge assessment (total $5) to increase to $8.50 + $1.00 (total $9.50) for certified copies and $8.50 + $1.00 (total $9.50) to amend or correct, to be shared with the local registration offices.

PHASE I FEE SCHEDULE					
Service*	Service Fee	System Access Fee	Surcharge	State Fee	Total Service Fee
Current Certified Copy Fee	$15.00	$4.00	$1.00	$5.00	$20.00
Phase I Certified Copy Fee	$19.50	$8.50	$1.00	$9.50	$29.00
Current Amend/Correct Fee	$25.00	$4.00	$1.00	$5.00	$30.00
Phase I Amend/Correct Fee	$29.50	$8.50	$1.00	$9.50	$39.00

*If rule can be modified to prevent local registration districts from charging themselves, Maricopa County would be supportive of the ADHS proposed non-certified copy fee. Otherwise, Maricopa County proposes no increase to this service fee

R9-19-105. Phase II Fee Schedule (Proposed by Maricopa County)

A. When a fee is specified in this Chapter, the following fees apply:

1. For a noncertified copy of a certificate, ~~$5.00~~ $4.00;

2. For a certified copy of a:

a. Certificate of birth registration, ~~$28.00~~ $34.00;

b. Certificate of delayed birth registration, ~~$28.00~~ $34.00;

c. Certificate of death registration, ~~$28.00~~ $34.00;

d. Certificate of delayed death registration, ~~$28.00~~ $34.00;

e. Certificate of fetal death registration, ~~$28.00~~ $34.00;

f. Certificate of birth resulting in stillbirth, ~~$28.00~~ $34.00;

g. Certificate of delayed fetal death registration, ~~$28.00~~ $34.00; or

h. Certificate of no record, ~~$28.00~~ $34.00;

3. For a search to verify birth or death data for statistical or research purposes according to A.R.S. § 36-342(A), ~~$5.00~~ $4.00;

4. For a request to establish a:

   a. Delayed birth record for an individual and register the individual's birth, ~~$28.00~~ $34.00;

   b. Registered record of foreign birth for an adopted individual, ~~$28.00~~ $34.00;

   c. Delayed death record for a deceased individual and register the deceased individual's death, ~~$28.00~~ $34.00;

   d. Delayed fetal death record for a fetal death and register the fetal death, ~~$28.00~~ $34.00; or

   e. Death record or delayed death record for a presumptive death under A.R.S. § 36-325 or 36-328, ~~$28.00~~ $34.00; and

5. For a request to amend or correct information in a:

   a. Registered birth record, ~~$38.00~~ $49.00;

   b. Registered death record, ~~$38.00~~ $49.00; or

   c. Registered fetal death record, ~~$38.00~~ $49.00.

B. If a request submitted and fee paid, as prescribed in subsection (A)(4) or (5), results in the registration of a birth, death, or fetal death or a correction or amendment to a registered birth record, registered death record, or registered fetal death record, the Department shall provide to the person submitting the request and paying the fee a certified copy of the applicable certificate for the registered, corrected, or amended record.

C. Except as provided in subsection (E), the Department shall not charge an agency, as defined in A.R.S. § 41-1001, any fee in this Section.

D. In addition to the fees charged in subsection (A), the Department shall assess the following surcharges:

1. As required in A.R.S. § 36-341(B), for a certified copy of a certificate of birth registration or certificate of delayed birth registration, $1.00; and

2. As required in A.R.S. § 36-341(E), for a certified copy of a certificate of death registration, certificate of delayed death registration, certificate of fetal death registration, or certificate of delayed fetal death registration, $1.00;

E. A local registrar shall pay the following surcharges to the Department for copies issued by the local registrar:

1. As required in A.R.S. § 36-341(B), for a certified copy of a certificate of birth registration or certificate of delayed birth registration, $1.00;

2. As required in A.R.S. § 36-341(E), for a certified copy of a certificate of death registration, certificate of delayed death registration, certificate of fetal death registration, or certificate of delayed fetal death registration, $1.00;

3. For system access for each certified copy of a certificate; ~~$8.50~~ $11.50; amend or correct ~~$8.50~~ $14.00 (increase difference split 50/50 with county); and

4. For system access for each noncertified copy of a certificate, $1.00

Phase II Fee Schedule includes a breakdown of the first increase consideration. The fees outlined would incorporate an increase in the $4 system access fee along with the $1.00 surcharge assessment (total $5) to increase to $8.50 + $1.00 (total $9.50) for certified copies and $14.00 + $1.00 (total $15.00) for amend or correct, to be shared with the local registration offices.

PHASE II FEE SCHEDULE					
Service*	Service Fee	System Access Fee	Surcharge	State Fee	Total Service Fee
Current Certified Copy Fee	$15.00	$4.00	$1.00	$5.00	$20.00
Phase I Certified Copy Fee	$19.50	$8.50	$1.00	$9.50	$29.00
Phase II Certified Copy Fee	$22.50	$11.50	$1.00	$12.50	$35.00
Current Amend/Correct Fee	$25.00	$4.00	$1.00	$5.00	$30.00
Phase I Amend/Correct Fee	$29.50	$8.50	$1.00	$9.50	$39.00
Phase II Amend/Correct Fee	$35.00	$14.00	$1.00	$15.00	$50.00

*If rule can be modified to prevent local registration districts from charging themselves, Maricopa County would be supportive of the ADHS proposed non-certified copy fee. Otherwise, Maricopa County proposes no increase to this service fee

Has anything been left out that should be in Chapter 19, Vital Records rules?

Greater distinction and clarification regarding the determination of a hospital correction v. a hospital amendment. Maricopa County proposes that a Certificate of Live Birth Worksheet be considered a correction, and that hospital amendments are instances when the hospital must supplement the worksheet with hospital medical records. (currently, hospitals may submit part of the individual's or mother's individual medical record containing specific information on R9-19-201 A(3) or (4). Maricopa County appreciates the need to do this but believes that Vital Records rules regarding this matter need greater clarification)

What questions/comments do you have that were not addressed above?

There is an opportunity to clean up/clarify the following areas: R9-19-212 C (1)(f)(ii) requiring the date of birth on the government -issued form of photo identification which is not consistent with R9-19-211A(1)(h)(ii), B(3)(ii), and other sections on R9-19-212, R9-19-315, R9-19-316. R9-

19-317 where it states “Accompanied by a copy of a valid, government-issued form of photo identification for the person contains the name and signature of the person.”

Suggest removing R9-19-207 B(3)(b) and allow for correcting hospital errors with birth worksheets only (previously explained above).

E-4.

DEPARTMENT OF HEALTH SERVICES
Title 9 Chapter 6 Article 13

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: **November 19, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 6, Article 13

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) covers one (1) rule in Title 9, Chapter 6, Article 13 related to Immunizations or Vaccines Requiring Prescriptions for Pharmacist Technicians. The Department is required to develop rules that "establish and maintain a list of immunizations or vaccines that may be administered to adults by a pharmacist only pursuant to a prescription order." This rule identifies the immunizations or vaccines that require a prescription order before being administered under A.A.C. R4-23-411.

The Department completed its prior course of action via exempt rulemaking effective November 14, 2017.

Proposed Action

The Department does not propose a course of action to amend the rules at this time. The Department believes the rule is sufficient to protect public health and does not plan to amend the rule in 9 A.A.C. 6, Article 13 unless a threat to public health or safety arises that would require amending the rule.

1. **Has the agency analyzed whether the rules are authorized by statute?**

   The Department cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department indicates it was not obliged to produce an economic, small business, and consumer impact statement for R9-6-1301 since the rule was adopted under exempt rulemaking. The rules in 9 A.C.C. 6 Article 13 were last revised through exempt rulemaking at 23 A.A.R. 3360, effective November 14, 2017.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states the purpose of this rule is to regulate the administration of certain vaccines by certified pharmacists, requiring a prescription order to ensure patient safety and compliance with health standards. The rule is important to public health because it ensures that certain vaccines are administered safely and appropriately by certified pharmacists, preventing the spread of serious diseases and protecting the community. The rules reflect national standards and industry norms and are the minimum necessary to protect the health and safety of the public. They ensure that vaccines requiring specialized knowledge and handling are administered correctly, thereby minimizing risks and maximizing public health benefits.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   The Department has not received written criticism of the rules in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

   The Department states the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

   The Department states the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

   The Department states the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

   The Department states the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department states that there is no corresponding federal law related to these rules.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department states the rules were adopted prior to July 29, 2010 and therefore this subsection does not apply.

11. Conclusion

This 5YRR from the Department covers one rule in Title 9, Chapter 6, Article 13 related to Immunizations or Vaccines Requiring Prescriptions for Pharmacist Technicians. As indicated above, the rules are consistent with other rules and statutes and clear, concise, and understandable.

The Department does not propose a course of action to amend the rules at this time.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

August 26, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 6, Article 13, Five-Year-Review Report for Communicable Diseases and Infestations - Immunizations or Vaccines Requiring Prescriptions for Pharmacist Administration

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 6, Article 13, Immunizations or Vaccines Requiring Prescriptions for Pharmacist Administration, which is due on October 31, 2024.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Lucinda Feeley at Lucinda.Feeley@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:lf

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 6. Department of Health Services -

Communicable Diseases and Infestations

Article 13. Immunizations or Vaccines Requiring Prescriptions for Pharmacist Administration

August 2024

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Specific Statutory Authority: A.R.S. § 32-1974(I)

2. **The objective of each rule:**

Rule	Objective
R9-6-1301	The objectives of the rule are to: a. Define terms used in the rule to enable the reader to understand clearly the requirements of the Section and allow for consistent interpretation, and b. Identify the specific immunizations or vaccines that require a prescription order before a certified pharmacist may administer the immunization or vaccine.

3. **Are the rules effective in achieving their objectives?** **Yes_X_** **No __**

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?** **Yes _X_** **No ___**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** **Yes _X_** **No __**

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** **Yes _X_** **No __**

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes ___** **No _X_**

If yes, please fill out the table below:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

Arizona Revised Statutes (A.R.S.) § 32-1974(I), created by Laws 2009, Ch. 41, requires the Arizona Department of Health Services (Department) to develop rules that "establish and maintain a list of immunizations or vaccines that may be administered to adults by a pharmacist only pursuant to a prescription order." The Department adopted one rule to implement this statute in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6 through exempt rulemaking effective October 5, 2009. The rule in 9 A.A.C. 6, Article 13 includes definitions applicable to the Section and identifies the immunizations or vaccines that require a prescription order before being administered under A.A.C. R4-23-411. Laws 2011, Ch. 103, § 2 revised A.R.S. § 32-1974(I) to clarify that the immunizations or vaccines required under A.R.S. § 32-1974(I) may only be administered to adults.

The Department was not obliged to produce an economic, small business, and consumer impact statement for R9-6-1301 since the rule was adopted under exempt rulemaking. Subsection (A) is explanatory, not regulatory, and thus has no economic impact. Subsection (B) contains a list of vaccines that require a prescription order before being administered by a pharmacist authorized under A.A.C. R4-23-411. The immunizations and vaccinations on the list may have severe side effects, different forms of the vaccine, or restrictions/considerations that should be discussed with a medical practitioner before administration. As required by statute, the immunizations or vaccines identified in subsection (B) are either listed in the U.S. Centers for Disease Control and Prevention (CDC) recommended adult immunization schedule or the CDC's health information for international travel. From November 2009 through July 2024, Arizona pharmacists have administered 673 doses of the Japanese Encephalitis vaccine; 3,598 doses of the Rabies vaccine; 8,970 doses of the injectable Typhoid vaccine; 7,521 doses of the oral Typhoid vaccine; 5,822 doses of the Yellow Fever vaccine; and 77 doses of the Cholera vaccine. Since it is not possible to determine who will request one of these vaccines or what health risks

they may have, subsection (B) provides a significant benefit to the public, in that the benefit is meaningful and important, but not readily subject to quantification.

The rule in 9 A.A.C. 6, Article 13 were last revised through exempt rulemaking at 23 A.A.R. 3360, effective November 14, 2017. In 2017, a new vaccine for cholera became available and needed to be added to the list of immunizations or vaccines in 9 A.A.C. 6, Article 13 that may be administered to an adult by a pharmacist only pursuant to a prescription order. The cholera vaccine is a live-attenuated vaccine, and the safety of the vaccine has not been widely studied, including in immunocompromised people. People with weakened immune systems are at higher risk of complications from live-attenuated vaccines. A physician or registered nurse practitioner should evaluate an individual before the vaccine is administered to discuss the risks to the individual and those in close contact with the individual before the individual receives this vaccine. It is critical that cholera was added to the list of immunizations or vaccines to protect an individual who may ask to be immunized by a pharmacist without knowing the potential consequences. Additionally, in this rulemaking, the Department added clarification to the rule to conform to changes made to A.R.S. § 32-1974 by Laws 2011, Ch. 103, § 2 and Laws 2016, Ch. 267. § 3. The Department estimates that rule changes and adding cholera to the list of immunizations or vaccines may have imposed minimal-to-no costs on related persons, and have produced a significant benefit for individuals affected by the rule to have an updated rule and adding the new cholera vaccine to the list in 9 A.A.C. 6, Article 13.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No _X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the 2014 five-year review report, the Department stated that the Department would revise the rule when a substantive matter occurs and would correct an outdated cross-reference when that time occurs. The Department completed this course of action through exempt rulemaking at 23 A.A.R. 3360, effective November 14, 2017.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The purpose of this rule is to regulate the administration of certain vaccines by certified pharmacists, requiring a prescription order to ensure patient safety and compliance with healthcare standards. The rule is important to public health because it ensures that certain vaccines are administered safely and appropriately by certified pharmacists, preventing the spread of serious diseases and protecting the community. The rules reflect national standards and industry norms and are the minimum necessary to protect the health and safety of the public. They ensure that vaccines requiring specialized knowledge and handling are administered correctly, thereby minimizing risks and maximizing public health benefits.

12. Are the rules more stringent than corresponding federal laws? **Yes ___ No _X_**

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

Federal laws do not apply to the rule in 9 A.A.C. 6, Article 13.

13. For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable, as the rule was adopted before July 29, 2010.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department believes the rule is sufficient to protect public health and does not plan to amend the rule in 9 A.A.C. 6, Article 13 unless a threat to public health or safety arises that would require amending the rule.

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information to promote good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of educating children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in coordinating local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in enforcing the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes and behavioral-supported group homes for persons with developmental disabilities. The department shall issue a license to an

accredited facility for a period of the accreditation, except that a licensing period shall not be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop,

tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of

performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking

receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of

all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This

procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

32-1974. Pharmacists; administration of immunizations, vaccines and emergency medications; authorization; reporting requirements; advisory committee; definition

A. Except as prescribed pursuant to subsection H of this section, a pharmacist who is licensed pursuant to this chapter and who meets the requirements of this section may order and administer all of the following:

1. Immunizations or vaccines recommended by the United States centers for disease control and prevention's advisory committee on immunization practices to a person who is at least six years of age.

2. Immunizations or vaccines recommended by the United States centers for disease control and prevention's advisory committee on immunization practices for international travel to a person who is at least eighteen years of age.

3. Immunizations or vaccines for influenza recommended by the United States centers for disease control and prevention's advisory committee on immunization practices to a person who is at least three years of age.

B. Except as prescribed in subsection A of this section, a pharmacist who is licensed pursuant to this chapter and who meets the requirements of this section may administer immunizations and vaccines to a person who is at least three years of age only pursuant to a prescription order or under a collaborative practice agreement.

C. A pharmacist who wishes to order and administer immunizations and vaccines pursuant to this section must update the pharmacist's online profile with the board indicating that the pharmacist is an active immunizer who meets requirements as prescribed by the board by rule.

D. A pharmacist who is authorized to order and administer immunizations and vaccines pursuant to this section may order and administer:

1. Emergency medication to manage an acute allergic reaction to an immunization, vaccine or medication in accordance with guidelines from the United States centers for disease control and prevention's advisory committee on immunization practices for adults and the American academy of pediatrics for minors.

2. Immunizations or vaccines to any person regardless of age during a public health emergency response of this state pursuant to section 36-787.

E. A pharmacist who administers an immunization, vaccine or emergency medication pursuant to this section must:

1. Notify the person's identified primary care provider or physician within forty-eight hours after administering the immunization, vaccine or emergency medication and as prescribed by the board by rule. The pharmacist shall make a reasonable effort to identify the person's primary care provider or physician by one or more of the following methods:

(a) Checking the Arizona state immunization information system established by the department of health services.

(b) Checking pharmacy records.

(c) Requesting the information from the person or, in the case of a minor, the person's parent or guardian.

2. Report information to the Arizona state immunization information system established by the department of health services.

3. Maintain a record of the immunization pursuant to title 12, chapter 13, article 7.1 and as prescribed by the board by rule.

4. Notify the person's identified primary care provider or physician, within twenty-four hours after occurrence, any adverse reaction that is reported to or witnessed by the pharmacist and that is listed by the vaccine manufacturer as a contraindication to further doses of the vaccine.

5. Notify the vaccine adverse event reporting system in accordance with the United States centers for disease control and prevention's advisory committee recommendations.

6. Provide vaccine information materials to those requesting immunizations or vaccines and, for persons under eighteen years of age, provide educational materials to the person's parent or guardian about the importance of pediatric preventive health care visits as recommended by the American academy of pediatrics.

7. Follow the standard operating procedures adopted by the pharmacy or other institution where the immunization, vaccine or emergency medication is administered that are based on the vaccine administration protocols and immunization practices published in the United States centers for disease control and prevention's morbidity and mortality weekly report. The standard operating procedures shall include all of the following:

(a) Patient screening requirements for relevant health condition information before administering a vaccine.

(b) A requirement to review the vaccine information, the Arizona state immunization information system and any other patient information on record to determine the person's past immunizations and adverse reactions before administering a vaccine.

(c) Emergency management policies and procedures.

F. This section does not establish a cause of action against a patient's primary care provider or physician for any adverse reaction, complication or negative outcome arising from the administration of any immunization, vaccine or emergency medication by a pharmacist to the patient pursuant to this section if it is administered without a prescription order written by the patient's primary care provider or physician.

G. The board shall adopt rules for ordering and administering vaccines, immunizations and emergency medications pursuant to this section regarding:

1. Recordkeeping and reporting requirements.

2. Requirements and qualifications for pharmacist authorization pursuant to this section.

H. The department of health services, by rule, shall establish and maintain a list of immunizations or vaccines that may be administered by a pharmacist only pursuant to a prescription order. In adopting and maintaining this list, the department is exempt from the rulemaking requirements of title 41, chapter 6. The list shall include those immunizations or vaccines recommended by the United States centers for disease control and prevention's health information for international travel that have adverse reactions that could cause significant harm to a patient's health. A pharmacist may not administer immunizations or vaccines without a prescription order pursuant to this section before the department has established the list pursuant to this subsection. The board may not authorize a pharmacist to administer new immunizations or vaccines without a prescription order pursuant to this section until the department reviews the new immunizations and vaccines to determine if they should be added to the list established pursuant to this subsection.

I. The board may appoint an advisory committee to assist the board in adopting and amending rules and developing protocols relating to ordering and administering immunizations, vaccines and emergency medications and training requirements.

J. A pharmacy intern who is trained to administer immunizations and vaccines pursuant to this section may do so only in the presence and under the supervision of a pharmacist who is authorized as prescribed in this section.

K. This section does not prevent a pharmacist who administers an immunization or vaccine from participating in the federal vaccines for children program.

L. A pharmacist may not administer an immunization or vaccine to a minor without the consent of the minor's parent or guardian.

M. For the purposes of this section, "emergency medication" means emergency epinephrine, corticosteroids, albuterol, oxygen and antihistamines in accordance with guidelines from the United States centers for disease control and prevention's advisory committee on immunization practices for adults and the American academy of pediatrics for minors.

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

Authority: A.R.S. §§ 36-132(A)(1) and 36-136(G)

ARTICLE 13. IMMUNIZATIONS OR VACCINES REQUIRING PRESCRIPTIONS FOR PHARMACIST ADMINISTRATION

Article 13, consisting of new Section R9-6-1301 made by exempt rulemaking at 15 A.A.R. 1793, effective October 5, 2009 (Supp. 09-4).

Section
R9-6-1301. Immunizations or Vaccines Requiring a Prescription Order for Pharmacist Administration

ARTICLE 13. IMMUNIZATIONS OR VACCINES REQUIRING PRESCRIPTIONS FOR PHARMACIST ADMINISTRATION

R9-6-1301. Immunizations or Vaccines Requiring a Prescription Order for Pharmacist Administration

A. In this Section, unless otherwise specified, the following definitions apply:
1. "Certified pharmacist" means an individual licensed under A.R.S. Title 32, Chapter 18, who is authorized under A.A.C. R4-23-411 to administer immunizations or vaccines.
2. "Immunization" has the same meaning as in A.R.S. § 36-671.
3. "Prescription order" has the same meaning as in A.R.S. § 32-1901.

B. The following immunizations or vaccines require a prescription order before the immunization or vaccine may be administered under A.A.C. R4-23-411 by a certified pharmacist:
1. Japanese Encephalitis vaccine,
2. Rabies vaccine,
3. Typhoid vaccines,
4. Yellow fever vaccine, and
5. Cholera vaccine.

Historical Note

New Section made by exempt rulemaking at 15 A.A.R. 1793, effective October 5, 2009 (Supp. 09-4). Amended by exempt rulemaking at 23 A.A.R. 3360, effective November 14, 2017 (Supp. 17-4).

E-5.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 12, Article 1 & 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024; November 5, 2024; December 3, 2024

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: November 19, 2024

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 12, Article 1 & 2

Staff Update

This Five-Year Review Report (5YRR) was previously considered at the September 24, 2024 Study Session and October 1, 2024 Council Meeting. Prior to the October 1, 2024 Council Meeting, the Council received a correspondence on behalf of the Alliance of Recovery Residences raising concerns regarding some of the issues the Department identified in its report. Ultimately, at the October 1, 2024 Council Meeting the Council voted to table consideration of this 5YRR to the October 29, 2024 Study Session and November 5, 2024 Council Meeting. The Department subsequently submitted a correspondence in response to the questions/concerns raised at the prior meetings which is included in the final materials for the Council's reference.

Prior to the November 5, 2024 Council Meeting, the Council received another correspondence on behalf of the Alliance of Recovery Residences. Additionally, at the November 5, 2024 Council Meeting, Council members had follow-up questions regarding the Department's proposed course of action to address issues identified in the report and responses to written criticisms of the rules in the last five years pursuant to A.R.S. § 41-1056(A)(2). Ultimately, the Council again voted to table consideration of this 5YRR to the current meeting cycle. The Department has submitted a revised 5YRR to address the concerns raised regarding its response to written criticisms of the rules in the last five years. A copy of the revised report is included in the final materials for the Council's reference. Council staff believes the revised

report complies with the Department's requirements under A.R.S. § 41-1056(A) and recommends approval of this report.

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to seven (7) rules and one (1) table in Title 9, Chapter 12, Article 1 regarding Licensure Requirements for sober living homes and seven (7) rules in Article 2 regarding Sober Living Home Requirements. Specifically, these rules "establish minimum standards and requirements for the licensure of sober living homes . . . necessary to ensure the public health, safety, and welfare" pursuant to A.R.S. § 36-2062(A).

This is the first 5YRR for these rules since they were established by regular rulemaking which became effective on July 1, 2019.

Proposed Action

In the current report, the Department indicates some of the rules are not clear, concise, understandable, consistent, or effective in achieving their objectives as outlined in more detail below. As such, the Department is proposing to amend the rules to address these issues and anticipates submitting a final rulemaking to the Council by August 2025.

1. **Has the agency analyzed whether the rules are authorized by statute?**

The Department cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department indicates the functions and persons affected by the 2019 rulemaking remain the same as anticipated.

Stakeholders include the Department and sober living homes and their occupants.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department believes the current rules pose the minimum cost and burden on businesses, the regulated public and on the general public and still achieve the regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department indicates it received no written criticisms of the rules in the last five years.

5. **<u>Has the agency analyzed the rules' clarity, conciseness, and understandability?</u>**

The Department indicates the rules are clear, concise, and understandable except for the following:

- R9-12-103
  - This Section and its heading could be clearer if it was clarified that this Section pertains to an initial application for licensure. This Section could also be improved by including that a license is valid for one year as per A.R.S. § 36-2662(B).
- R9-12-104
  - Subsection (A) indicates that a renewal application must be submitted at least 60 calendar days before the license expires. The rule needs to be clarified to say that the renewal application should be submitted "no more than" 60 days before the license expires.
- R9-12-106
  - Subsection (B)(1) could be improved by simplifying language to say that the Department will send written notice to the applicant specifying the documentation missing or the information that is not complete and a timeframe within which the applicant/licensee has to provide the missing documentation or information.
  - Subsection (B)(1)(c) could be improved by amending language to be clearer. Possible language that may be clearer: "The Department shall consider the application withdrawn if the applicant fails to supply the missing documents or information included in the notice in subsection (1)(a) within 60 calendar days after the date of the notice described in subsection (1)(a) or within a time period the applicant or licensee and the Department agree upon in writing."
  - Subsection (C) addresses the process during the substantive review of a licensing application. For clarity purposes, the Department proposes to reword this subsection to be clearer about the process, expectations, and if applicable, the process when the Department requests information.
- Table 1.1
  - For clarity purposes the Department proposes to amend the following: The table says "Type of approval" when it is actually the type of "application" is listed under this column; and adding the Section number that applies to "changes affecting a license, including modification," which is under R9-12-105. The Department also proposes to update the time-frames indicated on Table 1.1. Proposed updates are as described under #3 of this report (see R9-12-106). Furthermore, the proposed amendments to the time-frames will be more in line with other Department rules.
- R9-12-201
  - Subsection (B)(1)(b) indicates that a manager of a sober living home must be sober and have maintained sobriety for at least one year. For clarity, the Department is proposing to include that the licensee should obtain documentation verifying that the manager has maintained sobriety. Conforming amendments may also be added to subsection (H).

    - Subsection (G) could be improved if it clarified that the items listed in this subsection must be visible to visitors and residents. The Department also proposes to correct a spelling error: "manger" should be corrected to say "manager".
- R9-12-204
    - Subsection (A)(2) could be improved by clarifying that not only should the resident's record include the date of orientation, but the record should also include documentation that verifies that the resident received the facility's orientation. This may include a signed statement by the resident attesting to have received the facility's orientation.
- R9-12-205
    - This Section could be improved by clarifying that the services provided at a sober living home are reserved to individuals who have a residency agreement. This Section could be improved by adding that the licensee should maintain documentation of topics discussed at house meetings.
- R9-12-206
    - Subsection (1) could be improved by clarifying that in addition to a first aid kit being available at the sober living home, the manager shall ensure the first aid kit is accessible by residents.
- R9-12-207
    - This Section may also be improved if the rules included the option of a commercial permitted kitchen for applicants wanting to operate a sober living home that serves a larger population and who intend to use a commercial permitted kitchen in the facility. Conforming amendments to other rules in this Article may also be needed to address this option. Additionally, this Section may be improved if the rules allowed more flexibility on the requirement of the resident to have access to the kitchen or cooking appliances.
    - Subsection (6) should clarify that the temperature specified in this subsection includes all rooms within the sober living home. This subsection should include that if the bedroom has a separate heating or cooling system from the home, the temperature in the bedroom should also meet the temperature settings specified in rule if the resident does not have the option to control the temperature in the bedroom.
    - Subsection (D)(1)(d) could be made clearer by adding that the pest control program the sober living home implements complies with A.A.C. R3-8-201(C)(4).

6. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

The Department indicates the rules are generally consistent with other rules and statutes except for rule R9-12-201(D), which addresses the suspicion of abuse or exploitation and reporting responsibilities. The Department proposes to add "neglect" to align the rule with A.R.S. § 46-454.

7. **<u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>**

The Department indicates the rules are generally effective in achieving their objectives except for the following:

- R9-12-103
  - Subsection (A)(1)(j) requests an attestation that the applicant is in compliance with local zoning ordinances, building codes, and fire codes; however, to improve the effectiveness, this subsection needs to be updated to indicate that the applicant must provide verification that the applicant is in compliance with local zoning ordinances, building codes, and fire codes.
  - Subsection (A)(4) could be improved by adding that the applicant must include more details with the floor plan and site plan. For example, the floor plan should include each story of the residence, room layout and usage, window and door, exit, and location of fire protection device. For example, each site plan should include each facility, property line, street and walkway adjacent to the sober living home, parking, fencing, gate, and if applicable swimming pool.
  - Subsection (A) could be improved by including that an applicant must disclose any history of suspensions or revocations of a license or certificate in previous years, including this state or another state.
- R9-12-104
  - Subsection (A) could be improved by including that a licensee must disclose if any license or certificate has been suspended or revoked during the past licensing year.
- R9-12-105
  - To improve effectiveness of this Section, it should include that if applicable, a licensee must report a change if the status of the sober living home's certificate from a certifying organization has changed.
  - Subsection (A)(6)(a)(ii) and (iii) request a floor plan when there is a change to the number of residents allowed at the sober living home, or there is construction or modification to the sober living home. The floor plan should be consistent with the information that is being proposed as an amendment in R9-12-103(A)(4).
  - Subsection (B): To improve effectiveness this subsection needs to be updated and the requirement to notify the Department changed from "no more than 30 calendar days after the effective date of ..." to requiring the licensee to notify the Department "immediately" to report changes listed under this subsection.
  - Subsection (D): To improve effectiveness of this subsection, it should indicate that when reporting a change of ownership, the current licensee is responsible for the daily operations of the sober living home and prevent any interruptions of services required to sustain the life, health and safety of the residents while the licensee's current license is still in effect.
- R9-12-106
  - To improve effectiveness, the Department believes the time-frames in this Section should be updated to allow more time for administrative reviews and substantive reviews where needed and decrease time-frames where historically the current

time-frame stated in rule has not been needed. Confirming changes are being proposed as described in #6 of this report under "Table 1.1."

- R9-12-107
  - To improve effectiveness in subsection (A), the Department proposes to add that the Department may also consider denying or revoking an application or license when the applicant or licensee has had an application or license denied or revoked in another state or jurisdiction.
- R9-12-201
  - Subsection (B)(1)(c): To improve effectiveness, instead of requiring a manager to reside on the premises, the requirement should be amended to indicate that a licensee may have a manager live on the premises and the licensee shall ensure that a manager or staff is always on the premises of the sober living home when a resident is also on the premises.
  - Subsection (B)(3): Effectiveness could be improved by adding that the licensee's policy and procedures should include how the licensee or manager responds to an incident and subsequently documents the incident.
  - Subsection (B)(3)(n)(ii): Effectiveness can be improved by adding that the licensee's policy and procedures include that the licensee or manager will ensure staff's training regarding naloxone is provided upon staff on-boarding, offers refresher training, and/or when the method of administration of the naloxone available at the sober living home changes. The Department also proposes to make conforming changes to subsection (H)(4) to indicate that a personnel record should include the naloxone training received.
  - Subsection (E): Effectiveness of this subsection could be improved by adding that the manager shall not only notify the Department in writing of a resident's death, within one working day, but also notify the Department within two working days of any incidents of the resident's self-injury or other incidents requiring emergency medical services
  - Subsection (F): Effectiveness of this subsection could be improved by including the expectation that the licensee should also keep a vehicle maintenance log that includes all services and repairs of the vehicle used by the sober living home for the transportation of a resident; by adding that the licensee is required to have the vehicle used by the sober living home insured and registered; and that such vehicle should have a working air conditioner and heating system. The Department also proposes to remove "or arranges" as these proposed requirements cannot be imposed when using transportation services such as Uber, a taxi, public transportation, etc.
  - Subsection (H)(4): Effectiveness could be improved by adding that the personnel records should include that the staff are current with their cardiopulmonary resuscitation certification.
- R9-12-203
  - Subsection (A)(1) indicates that a manager must ensure that a resident is not subjected to what is listed in this subsection. This subsection can be improved by adding the following to this list: neglect, seclusion, restraint, misappropriation of personal and private property, denial of food, denial of the opportunity to sleep, and the denial of the opportunity to use the toilet.

- R9-12-207
    - Subsection (A)(5): Effectiveness could be improved by amending this subsection to allow more flexibility on the bathroom requirements and yet accomplishing the objective of the rule and ensure residents still have access to a bathroom.
    - Subsection (A)(9): Effectiveness could be improved by adding that the expectation is that the sober living home have a working telephone that is accessible for resident's use at all times. Conforming amendments will need to be made to R9-12-103(A)(1)(c) and R9-12-104(A)(1)(b).
    - Subsection (C)(7): Effectiveness could be improved by adding the expectation that the licensee also provides a bed frame, in addition to a clean mattress for a resident at the sober living home.

8. <u>Has the agency analyzed the current enforcement status of the rules?</u>

The Department indicates the rules are currently enforced as written.

9. <u>Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?</u>

The Department indicates there are no corresponding federal laws.

10. <u>For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?</u>

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates A.R.S. § 36-2062(E) states that a license is valid only for the premises and is not transferable. As such, the Department states a general permit is not applicable and is not used. The Department believes that under A.R.S. § 41-1037(A)(2) a general permit is not applicable as "[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute."

11. <u>Conclusion</u>

This 5YRR from the Department relates to seven (7) rules and one (1) table in Title 9, Chapter 12, Article 1 regarding Licensure Requirements for sober living homes and seven (7)

rules in Article 2 regarding Sober Living Home Requirements. Specifically, these rules "establish minimum standards and requirements for the licensure of sober living homes . . . necessary to ensure the public health, safety, and welfare" pursuant to A.R.S. § 36-2062(A).

The Department indicates some of the rules are not clear, concise, understandable, consistent, or effective in achieving their objectives. As such, the Department is proposing to amend the rules to address these issues and anticipates submitting a final rulemaking to the Council by August 2025.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT OF HEALTH SERVICES

July 29, 2024

<u>VIA EMAIL</u>: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 12, Articles 1 and 2, Five-Year-Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 12, Articles 1 and 2, which is due on or before July 31, 2024.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this Report, please contact Angie Trevino at angelica.trevino@azdhs.gov or (480) 589-0298.

Sincerely,

Stacie Gravito Digitally signed by Stacie Gravito
Date: 2024.07.29 12:42:14 -07'00'

Stacie Gravito
Director's Designee

SG:at

Enclosures

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 12. Sober Living Homes

Article 1. Licensure Requirements

Article 2. Sober Living Home Requirements

Due: July 31, 2024

Submitted: July 29, 2024

1. Authorization of the rule by existing statutes

Authorizing statutes: A.R.S. §§ 36-132(A)(1) and A.R.S. 36-136(G)

Implementing statutes: A.R.S. §§ 36-2062, 36-2063, and 36-2064

2. The objective of each rule:

Article 1

Rule	Objective
R9-12-101. Definitions	The objective of this rule is to define terms used in Article 1 and 2 of this Chapter, allowing for consistent interpretation.
R9-12-102. Individuals to Act for Applicant or Licensee	The objective of this rule is to specify the criteria when an individual is signing an application or a document on behalf of the business organization or if it is an individual applying, then it's the individual applying signing an application.
R9-12-103. Application for a License	The objective of this rule is to detail the application requirements.
R9-12-104. License Renewal	The objective of this rule is to detail the requirements for a license renewal application.
R9-12-105. Changes Affecting a License	The objective of this rule is to detail the changes that affect the license that must be reported to the Department; and the Department's process when changes to the license are reported.
R9-12-106. Time-frames	The objective of this rule is to detail the time-frame requirements according to A.R.S. § 41-1072
R9-12-107. Denial, Revocation, or Suspension of a License	The objective of this rule is to list the actions the Department may take and specify the criteria the Department will consider when determining such action.

Table 1.1. Time-frames (in calendar days)	The objective of this table is to summarize the time-frame durations used by the Department when reviewing applications.

Article 2

Rule	Objective
R9-1-201. Administration	The objective of the rule is to establish minimum requirements of administrative responsibilities and guidelines for licensees overseeing sober living homes.
R9-1-202. Residency Agreements	The objective of the rule is to establish minimum requirements for accepting and retaining an individual to be a resident at the sober living home, the manager's responsibilities, and agreements for residency.
R9-1-203. Resident Rights	The objective of the rule is to establish minimum requirement for resident rights and the managers responsibilities pertaining to a resident's rights.
R9-12-204. Records	The objective of the rule is to establish minimum requirements for resident's records.
R9-12-205. Sober Living Home Services	The objective of the rule is to establish minimum services provided at a sober living home.
R9-12-206. Emergency and Safety Standards	The objective of the rule is to establish minimum emergency and safety standards relevant to the sober living home.
R9-12-207. Environmental and Physical Plan Requirements	The objective of the rule is to establish minimum environmental and physical plant standards.

3. Are the rules effective in achieving their objectives? **Yes __ No _X_**

Rule	Explanation
R9-12-103	Subsection (A)(1)(j) requests an attestation that the applicant is in compliance with local zoning ordinances, building codes, and fire codes. The Department will consider new language to improve the effectiveness of this subsection at the time the Department conducts rulemaking. Subsection (A)(4) could be improved by adding that the applicant must include more details with the floor plan and site plan. For example, the floor plan should include each story of the residence, room layout and usage, window and door, exit, and location of fire protection device. For example, each site plan should include each facility, property line, street and walkway adjacent to the sober living home, parking, fencing, gate, and if applicable swimming pool.

	Subsection (A) could be improved by including that an applicant must disclose any history of suspensions or revocations of a license or certificate in previous years, including this state or another state.
R9-12-104	Subsection (A) could be improved by including that a licensee must disclose if any license or certificate has been suspended or revoked during the past licensing year.
R9-12-105	To improve effectiveness of this Section, it should include that if applicable, a licensee must report a change if the status of the sober living home's certificate from a certifying organization has changed. Subsection (A)(6)(a)(ii) and (iii) request a floor plan when there is a change to the number of residents allowed at the sober living home, or there is construction or modification to the sober living home. The floor plan should be consistent with the information that is being proposed as an amendment in R9-12-103(A)(4). Subsection (B): To improve effectiveness this subsection needs to be updated and the requirement to notify the Department changed from "no more than 30 calendar days after the effective date of ..." to requiring the licensee to notify the Department "immediately" to report changes listed under this subsection. Subsection (D): To improve effectiveness of this subsection, it should indicate that when reporting a change of ownership, the current licensee is responsible for the daily operations of the sober living home and prevent any interruptions of services required to sustain the life, health and safety of the residents while the licensee's current license is still in effect.
R9-12-106	To improve effectiveness, the Department believes the time-frames in this Section should be updated to allow more time for administrative reviews and substantive reviews where needed and decrease time-frames where historically the current time-frame stated in rule has not been needed. Confirming changes are being proposed as described in #6 of this report under "Table 1.1."
R9-12-107	To improve effectiveness in subsection (A), the Department proposes to add that the Department may also consider denying or revoking an application or license when the applicant or licensee has had an application or license denied or revoked in another state or jurisdiction.
R9-12-201	Subsection (B)(1)(c): To improve effectiveness, instead of requiring a manager to reside on the premises, the requirement should be amended to indicate that a licensee may have a manager live on the premises and the licensee shall ensure that a manager or staff is always on the premises of the sober living home when a resident is also on the premises. Subsection (B)(3): Effectiveness could be improved by adding that the licensee's policy and procedures should include how the licensee or manager responds to an incident and subsequently documents the incident. Subsection (B)(3)(n)(ii): Effectiveness can be improved by adding that the licensee's policy and procedures include that the licensee or manager will ensure

	staff's training regarding naloxone is provided upon staff on-boarding, offers refresher training, and/or when the method of administration of the naloxone available at the sober living home changes. The Department also proposes to make conforming changes to subsection (H)(4) to indicate that a personnel record should include the naloxone training received. Subsection (E): Effectiveness of this subsection could be improved by adding that the manager shall not only notify the Department in writing of a resident's death, within one working day, but also notify the Department within two working days of any incidents of the resident's self-injury or other incidents requiring emergency medical services Subsection (F): Effectiveness of this subsection could be improved by including the expectation that the licensee should also keep a vehicle maintenance log that includes all services and repairs of the vehicle used by the sober living home for the transportation of a resident; by adding that the licensee is required to have the vehicle used by the sober living home insured and registered; and that such vehicle should have a working air conditioner and heating system. The Department also proposes to remove "or arranges" as these proposed requirements cannot be imposed when using transportation services such as Uber, a taxi, public transportation, etc. Subsection (H)(4): Effectiveness could be improved by adding that the personnel records should include that the staff are current with their cardiopulmonary resuscitation certification.
R9-12-203	Subsection (A)(1) indicates that a manager must ensure that a resident is not subjected to what is listed in this subsection. This subsection can be improved by adding the following to this list: neglect, seclusion, restraint, misappropriation of personal and private property, denial of food, denial of the opportunity to sleep, and the denial of the opportunity to use the toilet.
R9-12-207	Subsection (A)(5): Effectiveness could be improved by amending this subsection to allow more flexibility on the bathroom requirements and yet accomplishing the objective of the rule and ensure residents still have access to a bathroom. Subsection (A)(9): Effectiveness could be improved by adding that the expectation is that the sober living home have a working telephone that is accessible for resident's use at all times. Conforming amendments will need to be made to R9-12-103(A)(1)(c) and R9-12-104(A)(1)(b). Subsection (C)(7): Effectiveness could be improved by adding the expectation that the licensee also provides a bed frame, in addition to a clean mattress for a resident at the sober living home.

4. <u>Are the rules consistent with other rules and statutes?</u> **Yes __ No _X_**

Rule	Explanation
R9-12-201	Subsection (D) addresses the suspicion of abuse or exploitation and reporting responsibilities. The Department proposes to add "neglect" to align the rule with A.R.S. § 46-454.

5. <u>Are the rules enforced as written?</u> **Yes _X_ No __**

Rule	Explanation

6. <u>Are the rules clear, concise, and understandable?</u> **Yes ___ No _X_**

Rule	Explanation
R9-12-103	This Section and its heading could be clearer if it was clarified that this Section pertains to an initial application for licensure. This Section could also be improved by including that a license is valid for one year as per A.R.S. § 36-2662(B).
R9-12-104	Subsection (A) indicates that a renewal application must be submitted at least 60 calendar days before the license expires. The rule needs to be clarified to say that the renewal application should be submitted "no more than" 60 days before the license expires.
R9-12-106	Subsection (B)(1) could be improved by simplifying language to say that the Department will send written notice to the applicant specifying the documentation missing or the information that is not complete and a timeframe within which the applicant/licensee has to provide the missing documentation or information. Subsection (B)(1)(c) could be improved by amending language to be clearer. Possible language that may be clearer: "The Department shall consider the application withdrawn if the applicant fails to supply the missing documents or information included in the notice in subsection (1)(a) within 60 calendar days after the date of the notice described in subsection (1)(a) or within a time period the applicant or licensee and the Department agree upon in writing." Subsection (C) addresses the process during the substantive review of a licensing application. For clarity purposes, the Department proposes to reword this subsection to be clearer about the process, expectations, and if applicable, the process when the Department requests information.
Table 1.1	For clarity purposes the Department proposes to amend the following: The table says "Type of approval" when it is actually the type of "application" is listed under this column; and adding the Section number that applies to "changes affecting a license, including modification," which is under R9-12-105. The Department also proposes to update the time-frames indicated on Table 1.1. Proposed updates are

	as described under #3 of this report (see R9-12-106). Furthermore, the proposed amendments to the time-frames will be more in line with other Department rules.
R9-12-201	Subsection (B)(1)(b) indicates that a manager of a sober living home must be sober and have maintained sobriety for at least one year. This subsection would benefit from clarification. Clarifying language will be considered when the Department conducts rulemaking. Subsection (G) could be improved if it clarified that the items listed in this subsection must be visible to visitors and residents. The Department also proposes to correct a spelling error: "manger" should be corrected to say "manager".
R9-12-204	Subsection (A)(2) could be improved by clarifying that not only should the resident's record include the date of orientation, but the record should also include documentation that verifies that the resident received the facility's orientation. This may include a signed statement by the resident attesting to have received the facility's orientation.
R9-12-205	This Section could be improved by clarifying that the services provided at a sober living home are reserved to individuals who have a residency agreement. This Section could be improved by adding that the licensee should maintain documentation of topics discussed at house meetings.
R9-12-206	Subsection (1) could be improved by clarifying that in addition to a first aid kit being available at the sober living home, the manager shall ensure the first aid kit is accessible by residents.
R9-12-207	This Section may also be improved if the rules included the option of a commercial permitted kitchen for applicants wanting to operate a sober living home that serves a larger population and who intend to use a commercial permitted kitchen in the facility. Conforming amendments to other rules in this Article may also be needed to address this option. Additionally, this Section may be improved if the rules allowed more flexibility on the requirement of the resident to have access to the kitchen or cooking appliances. Subsection (6) should clarify that the temperature specified in this subsection includes all rooms within the sober living home. This subsection should include that if the bedroom has a separate heating or cooling system from the home, the temperature in the bedroom should also meet the temperature settings specified in rule if the resident does not have the option to control the temperature in the bedroom. Subsection (D)(1)(d) could be made clearer by adding that the pest control program the sober living home implements complies with A.A.C. R3-8-201(C)(4).

7. Has the agency received written criticisms of the rules within the last five years? Yes X No __

Commenter	Comment	Agency's Response
Arizona Recovery Housing Authority (AzRHA) via U.S. Department of Housing and Urban Development (HUD) *See* US District Court of Arizona Case No. CV-20-00893-PHX-JAT	The original complaint filed by AzRHA challenged several portions of the sober living statutory scheme and the rules that were required by the statutes. Specifically, in May 2020, the Department was sued in federal court alleging that the sober living home ("SLH") statutes and rules violated the Fair Housing Act ("FHA"), the Americans with Disabilities Act ("ADA") and § 794 of the Federal Rehabilitation Act because: (1) the statutes and rules require a good neighbor policy, the fees for licensure were excessive, and the Department had refused to grant SLH applicants (i.e. all AzRHA members) the reasonable accommodation they requested (i.e. fee waiver). AzRHA's temporary restraining order application was denied by the Federal Court on May 27, 2020 wherein the Court found that AzRHA did not make a showing that its members were in imminent or irreparable harm. Further, the Court found AzRHA's reasonable accommodation request was untenable. At all times since the initial complaint was filed, he Department has been cooperating and providing data to HUD representatives. As of the date of this filing, and as a result of the Department's cooperation and data, there remain outstanding questions regarding only the application of the good neighbor policy and procedures in A.A.C. Section R9-12-201(B)(2) (as required in A.R.S. § 36-2062(A)(5)) and the amount of the licensing fee in A.A.C. R9-12-103(A)(6) (as directed by A.R.S. § 36-2063(A)).	At this juncture, the Department is still cooperating with HUD and does not know the outcome of this investigation. However, there may be potential litigation about which the Department cannot comment at this time.

8. Economic, small business, and consumer impact comparison:

A.R.S. § 36-2062(A) requires the Department of Health Services (Department) to "adopt rules to establish minimum standards and requirements for the licensure of sober living homes . . . necessary to

ensure the public health, safety, and welfare." The statute also requires the inclusion of specific standards; the establishment of fees for initial licensure, license renewal, and late payment of licensing fees; and provisions for the Department's enforcement of licensing requirements. The Department has adopted rules for licensing sober living homes in Arizona Administrative Code Title 9, Chapter 12. The rules in this Chapter became effective on July 1, 2019.

An economic, small business, and consumer impact statement was completed in 2019. Persons affected by these rules remains the same as first reported in the 2019 economic, small business, and consumer impact statement.

Almost all requirements in the rules are tied directly to a specific statutory requirement. As such, costs imposed by and benefits derived from them are the result of the statutes, rather than the rules. The Department designated the following costs/revenues at the time of the 2019 rulemaking and remain the same: Annual costs/revenues are designated as minimal when more than $0 and $5,000 or less, moderate when between $5,000 and $20,000, and substantial when $20,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

In the 2019, the Department reported that it anticipated to need 13 to 14 new FTEs to monitor the requirements of these rules costing the Department approximately $1,050,000.00 with an average salary of $55,000. The Department approximated that between 5-11 new surveyors were going to be needed. Currently, the Bureau of Behavioral Health Facilities Licensing is the program/unit responsible for enforcement of the rules in this Chapter. This bureau has one Bureau Chief; one Deputy Bureau Chief; four managers; 15 Licensing Surveyors; two vacant Licensing Surveyor positions that manage the licensing or certification of six licensing or certification types, of which sober living home licensing is included. The functions as detailed in the 2019 economic, small business and consumer impact statement remain the same. Costs for the Department include salary plus overhead costs.

Thus far in calendar year 2024, the Department has received 95 initial applications, licensed 35 sober living homes, renewed 77 sober living home licenses, and processed 12 applications for changes to the license. Of these applications received, the Department denied: seven initial applications, zero renewal applications, and zero applications for changes. The Department also suspended or revoked 11 licenses, thus far in calendar year 2024. In Fiscal Year 2024, the Department also conducted 624 total inspections, which include 63 complaint investigations in response to complaints received.

The Department anticipates that many sober living homes will continue to incur a minimal cost for licensing, which may be offset by fees charged to residents. Similar costs and benefits would apply to a person planning to open a sober living home in Arizona.

9. Has the agency received any business competitiveness analyses of the rules? Yes __ No _X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Not applicable. This is the first review of the rules in 9 A.A.C 12, Articles 1 and 2.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department of Health Services (Department) believes the current rules pose the minimum cost and burden on businesses, the regulated public and on the general public and still achieve the regulatory objective.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

Federal laws are not applicable to the rules in 9 A.A.C. 12, Articles 1 and 2.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Because A.R.S. § 36-2062(E) states that a license is valid only for the premises and is not transferable, a general permit is not applicable and is not used. Therefore, Department believes that under A.R.S. § 41-1037(A)(2) that a general permit is not applicable.

14. Proposed course of action:

The Department of Health Services has reviewed the current rules and proposes to amend the rules to address the issues identified in this report. The Department proposes to submit final rulemaking to the Council by January 2026.

Arizona Secretary of State
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Date: 2019.12.23 15:40:01 -07'00'

Administrative Rules Division
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TITLE 9. DEPARTMENT OF HEALTH SERVICES

CHAPTER 12. SOBER LIVING HOMES

Authority: A.R.S. §§ 36-132(A)(1) and A.R.S. 36-136(G)

ARTICLE 1. LICENSURE REQUIREMENTS

New Article, consisting of Sections R9-12-101 through R9-12-107, and Table 1.1, made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

Section

R9-12-101. Definitions 2
R9-12-102. Individuals to Act for Applicant or Licensee 2
R9-12-103. Application for a License 3
R9-12-104. License Renewal 3
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ARTICLE 2. SOBER LIVING HOME REQUIREMENTS

New Article, consisting of Sections R9-12-201 through R9-12-207, made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

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CHAPTER 12. SOBER LIVING HOMES

ARTICLE 1. LICENSURE REQUIREMENTS

R9-12-101. Definitions

In addition to the definitions in A.R.S. § 36-2061, the following definitions apply in this Chapter unless otherwise specified:

1. "Abuse" means:
   a. The same as in A.R.S. § 46-451;
   b. A pattern of ridiculing or demeaning a resident;
   c. Making derogatory remarks or verbally harassing a resident; or
   d. Threatening to inflict physical harm on a resident.
2. "Accept" or "acceptance" means an individual becomes a resident of a sober living home.
3. "Administrative completeness review time-frame" means the same as in A.R.S. § 41-1072.
4. "Applicant" means an individual or business organization requesting a license under R9-12-104 to open a sober living home.
5. "Application packet" means the forms, documents, and additional information the Department requires to be submitted by an applicant.
6. "Business organization" means the same as "entity" in A.R.S. § 10-140.
7. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
8. "Controlling person" means a person who, with respect to a business organization:
   a. Has the power to vote at least 10% of the outstanding voting securities of the business organization;
   b. If the business organization is a partnership, is a general partner or is a limited partner who holds at least 10% of the voting rights of the partnership;
   c. If the business organization is a corporation, association, or limited liability company, is the president, the chief executive officer, the incorporator, an agent, or any person who owns or controls at least 10% of the voting securities; or
   d. Holds a beneficial interest in 10% or more of the liabilities of the business organization.
9. "Department" means the Arizona Department of Health Services.
10. "Documentation" means information in written, photographic, electronic, or other permanent form.
11. "Drug" has the same meaning as in A.R.S. § 32-1901.
12. "Exploitation" has the same meaning as in A.R.S. § 46-451.
13. "Facility" means the building or buildings used for operating a sober living home.
14. "Health care provider" means a:
    a. Physician, as defined in A.R.S. § 36-401;
    b. Registered nurse practitioner, as defined in A.R.S. § 32-1601; or
    c. Physician assistant, as defined in A.R.S. § 32-2501.
15. "Illicit drug" means:
    a. A substance listed in A.R.S. § 36-2512 as a schedule I controlled substance;
    b. A dangerous drug, as defined in A.R.S. § 13-3401, that is not an individual's prescription medication; or
    c. A prescription medication that is not an individual's prescription medication.
16. "Licensee" means the individual or business organization to which the Department has issued a license to operate a sober living home.
17. "Manager" means an individual designated by a licensee to:
    a. Act on behalf of the licensee in the onsite management of a sober living home; and
    b. Support and assist residents of the sober living home.
18. "Modification" means the substantial improvement, enlargement, reduction, alteration, or other substantial change in the facility or another structure on the premises at a sober living home.
19. "Over-the-counter drug" means the same as in A.R.S. § 32-1901.
20. "Overall time-frame" means the same as in A.R.S. § 41-1072.
21. "Premises" means:
    a. A facility; and
    b. The grounds surrounding the facility that are owned, leased, or controlled by the licensee, including other structures.
22. "Prescription medication" means the same as in A.R.S. § 32-1901.
23. "Residency agreement" means a document signed by a resident or the resident's representative and a manager, detailing the terms of residency.
24. "Resident" means an individual who is accepted by a licensee under the terms of a residency agreement with the individual to live at the licensee's sober living home.
25. "Resident's representative" means:
    a. An individual acting on behalf of a resident with the written consent of the resident, or
    b. The resident's legal guardian.
26. "Sober" or "sobriety" means that an individual is free of alcohol or drugs, except for a drug that is:
    a. Used as part of medication-assisted treatment,
    b. The individual's prescription medication, or
    c. An over-the-counter drug.
27. "Staff" means the employees or volunteers who provide monitoring or assistance to residents at a sober living home.
28. "Substantive review time-frame" means the same as in A.R.S. § 41-1072.
29. "Swimming pool" means the same as "private residential swimming pool" as defined in A.A.C. R18-5-201.
30. "Termination of residency" or "terminate residency" means an individual is no longer a resident of a sober living home.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-102. Individuals to Act for Applicant or Licensee

When an applicant or licensee is required by this Chapter to provide information on or sign an application form or other document, the following shall satisfy the requirement on behalf of the applicant or licensee:

1. If the applicant or licensee is an individual, the individual; and
2. If the applicant or licensee is a business organization, the individual who the business organization has designated to act on the business organization's behalf for purposes of this Chapter and who:
   a. Is a controlling person of the business organization,
   b. Is a U.S. citizen or legal resident, and

c. Has an Arizona address.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-103. Application for a License

A. An applicant shall submit to the Department a completed application packet to operate a sober living home that contains:
1. An application, in a Department-provided format, that includes:
   a. The applicant's name;
   b. The proposed name, if any, of the sober living home;
   c. The address and telephone number of the proposed sober living home;
   d. The applicant's address and telephone number, if different from the address or telephone number of the proposed sober living home;
   e. The applicant's e-mail address;
   f. The name and contact information of an individual acting on behalf of the applicant according to R9-12-102, if applicable;
   g. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-12-106(C)(3);
   h. The maximum number of residents of the proposed sober living home;
   i. The name, telephone number, and e-mail address of the manager for the proposed sober living home;
   j. An attestation that the applicant is in compliance with local zoning ordinances, building codes, and fire codes; and
   k. The applicant's signature and the date signed;
2. Documentation for the applicant that complies with A.R.S. § 41-1080;
3. If applicable, a copy of the applicant's current certificate as a sober living home from a certifying organization approved by the Director;
4. A floor plan for the proposed sober living home, including:
   a. The location and size of each resident bedroom, and
   b. The location of each openable window or door from a resident bedroom;
5. If the premises for the proposed sober living home are leased, documentation from the owner of the premises, in a Department-provided format, that the applicant has permission from the owner to operate a sober living home on the premises; and
6. A licensing fee of $500 plus $100 times the maximum number of residents of the proposed sober living home in subsection (A)(1)(h).

B. Upon receipt of the application packet in subsection (A), the Department shall issue or deny a license to an applicant as provided in R9-12-106.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-104. License Renewal

A. At least 60 calendar days before the expiration date indicated on a license to operate a sober living home, a licensee shall submit to the Department an application packet for renewal of the license that contains:
1. An application, in a Department-provided format, that includes:
   a. The applicant's name;
   b. The address and telephone number of the sober living home;
   c. The applicant's address and telephone number, if different from the address or telephone number of the sober living home;
   d. The applicant's e-mail address;
   e. The license number of the sober living home; and
   f. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-12-106(C)(3);
2. If applicable, a copy of the licensee's current certificate as a sober living home from a certifying organization approved by the Director; and
3. Except as provided in subsection (B), a licensing fee of $500 plus $100 times the maximum number of residents approved for the sober living home during the current licensing period.

B. A licensee may submit to the Department the licensing fee in subsection (A)(3) with an additional late payment fee of $250 within 30 calendar days after the expiration date of the license as a sober living home.

C. The Department shall renew or deny renewal of a license to operate a sober living home as provided in R9-12-106.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-105. Changes Affecting a License

A. A licensee shall notify the Department in writing at least 30 calendar days before the effective date of:
1. Termination of operation of the sober living home, including the proposed termination date;
2. A change in the individual or business organization controlling the sober living home, including the name, address, telephone number, and e-mail address of the individual or business organization proposing to assume control of the sober living home;
3. A change in the address of the sober living home, including the new address for the sober living home;
4. A change in the name of the sober living home, including the new name of the sober living home;
5. If the licensee is an individual, a legal change of the licensee's name, including the new name of the licensee; or
6. A proposed change in the maximum number of residents in the sober living home or construction or modification of the facility, including:
   a. A floor plan for the sober living home showing:
      i. If applicable, the areas in which construction or modification of the facility will occur;
      ii. The location and size of each resident bedroom; and
      iii. The location of each openable window or door from a resident bedroom;
   b. For a proposed change in the maximum number of residents in the sober living home:
      i. The proposed new maximum number of residents in the sober living home; and
      ii. If the proposed new maximum number of residents in the sober living home is larger than the current maximum number of residents, a fee of $100 times the difference between the current maximum number of residents and the new maximum number of residents; and
   c. For construction or modification of the facility, an attestation that the construction or modification will

be in compliance with local zoning ordinances, building codes, and fire codes.

B. A licensee shall notify the Department in writing no more than 30 calendar days after the effective date of:
1. A change in the name or contact information of an individual acting on behalf of the licensee according to R9-12-102, including the name and contact information of the new individual acting on behalf of the licensee;
2. A change in the licensee's e-mail address, including the new e-mail address; or
3. A change in the manager of the sober living home, including the name, telephone number, and e-mail address of the new manager.

C. If the Department receives the notification of termination of operation in subsection (A)(1), the Department shall void the licensee's license to operate a sober living home as of the termination date specified by the licensee.

D. If the Department receives the notification in subsection (A)(2) of a change in the individual or business organization controlling the sober living home, the Department shall void the licensee's license to operate a sober living home upon issuance of a new license to operate a sober living home.

E. If the Department receives the notification in subsection (A)(3) of a change in the address of the sober living home, the Department shall review, according to R9-12-106, the licensee's application for a new license, submitted consistent with R9-12-103.

F. If the Department receives the notification of a change in the name of the sober living home in subsection (A)(4) or of the licensee in subsection (A)(5), the Department shall issue to the licensee an amended license that incorporates the change but retains the expiration date of the existing license.

G. If the Department receives the notification in subsection (A)(6) of a proposed change in the maximum number of residents in the sober living home or of construction or modification of the facility, the Department:
1. May conduct an inspection of the premises as allowed by A.R.S. § 36-2063; and
2. Shall issue to the licensee an amended license that incorporates the change but retains the expiration date of the existing license if the sober living home is in compliance with A.R.S. Title 36, Chapter 18, Article 4 and this Chapter.

H. An individual or business organization planning to assume operation of an existing sober living home shall obtain a new license, as required in A.R.S. § 36-2062(E), before beginning operation of the sober living home.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-106. Time-frames

A. The overall time-frame for a license granted by the Department under this Chapter is set forth in Table 1.1. The applicant or licensee and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. The administrative completeness review time-frame for a license granted by the Department under this Chapter is set forth in Table 1.1 and begins on the date that the Department receives an application packet.
1. The Department shall send a notice of administrative completeness or deficiencies to the applicant or licensee within the administrative completeness review time-frame.
   a. A notice of deficiencies shall list each deficiency and the information or items needed to complete the application.
   b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is sent until the date that the Department receives all of the missing information or items from the applicant or licensee.
   c. If an applicant or licensee fails to submit to the Department all of the information or items listed in the notice of deficiencies within 120 calendar days after the date that the Department sent the notice of deficiencies or within a time period the applicant or licensee and the Department agree upon in writing, the Department shall consider the application withdrawn.
2. If the Department issues a license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame is set forth in Table 1.1 and begins on the date of the notice of administrative completeness.
1. As part of the substantive review of an application for a license, the Department may conduct an inspection according to A.R.S. § 36-2063 that may require more than one visit to complete.
2. The Department shall send a license or a written notice of denial of a license within the substantive review time-frame.
3. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the applicant or licensee has agreed in writing to allow the Department to submit supplemental requests for information.
   a. The Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies, stating each statute and rule upon which noncompliance is based, if the Department determines that an applicant or licensee, a sober living home, or the premises are not in substantial compliance with A.R.S. Title 36, Chapter 18, Article 4 or this Chapter.
   b. An applicant or licensee shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of the corrections required in a statement of deficiencies, within 30 calendar days after the date of the comprehensive written request for additional information or the supplemental request for information or within a time period the applicant or licensee and the Department agree upon in writing.
   c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including, if applicable, documentation of corrections required in a statement of deficiencies.
   d. If an applicant or licensee fails to submit to the Department all of the information requested in a

comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of corrections required in a statement of deficiencies, within the time prescribed in subsection (C)(3)(b), the Department shall deny the application.

4. The Department shall issue a license if the Department determines that the applicant or licensee and the sober living home, including the premises, are in substantial compliance with A.R.S. Title 36, Chapter 18, Article 4, and this Chapter.
5. If the Department denies a license, the Department shall send to the applicant or licensee a written notice of denial setting forth the reasons for denial and all other information required by A.R.S. § 41-1076.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-107. Denial, Revocation, or Suspension of a License

A. The Department may deny an application or suspend or revoke a license to operate a sober living home if:
1. An applicant or licensee does not meet the application requirements contained in R9-12-103(A) or R9-12-104(A), as applicable;
2. A licensee does not comply with requirements in A.R.S. Title 36, Chapter 18, Article 4, or this Chapter;
3. A licensee does not correct the deficiencies according to the plan of correction specified in R9-12-201(J)(1) by the time stated in the plan of correction;
4. An applicant or licensee provides false or misleading information as part of an application; or
5. The nature or number of violations revealed by any type of inspection or investigation of a sober living home poses a direct risk to the life, health, or safety of a resident or another individual on the premises.

B. In determining which action in subsection (A) is appropriate, the Department shall consider the direct risk to the life, health, or safety of a resident in the sober living home based on:
1. Repeated violations of statutes or rules,
2. Pattern of violations,
3. Types of violation,
4. Severity of violation, and
5. Number of violations.

C. An applicant or licensee may appeal the Department's determination in subsection (A) according to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

Table 1.1. Time-frames (in calendar days)

Type of approval	Statutory authority	Overall time-frame	Administrative completeness review time-frame	Substantive review time-frame
Application for a license under R9-12-103	A.R.S. § 36-2062	90	30	60
Renewal of a license under R9-12-104	A.R.S. § 36-2062	30	10	20
Changes affecting a license, including modifications	A.R.S. § 36-2062	60	30	30

Historical Note
Table 1.1 made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

ARTICLE 2. SOBER LIVING HOME REQUIREMENTS

R9-12-201. Administration

A. A licensee of a sober living home:
1. Has the authority and responsibility for the management of the sober living home, including when the licensee designates another individual or contracts with a person to accomplish an action or perform a service;
2. Shall establish, in writing, the scope of services to be provided by the sober living home;
3. Shall designate, in writing, an individual, who may be the licensee, as the manager of the sober living home; and
4. Shall ensure that the knowledge, skills, and experience of the manager and any other staff of the sober living home are sufficient to carry out the scope of services established according to subsection (A)(2).

B. A licensee shall ensure that:
1. A manager:
   a. Is at least 21 years of age;
   b. Is sober and has maintained sobriety for at least one year;
   c. Resides on the premises of only the one sober living home;
   d. Has documentation of current training in cardiopulmonary resuscitation; and
   e. Is directly accountable to the licensee for:
      i. The daily operation of the sober living home;
      ii. Enforcing all policies and procedures, house rules, and other requirements of the sober living home; and
      iii. All services provided by or at the sober living home;
2. Policies and procedures are established, documented, and implemented to:
   a. Prevent or address any concerns or complaints from individuals living in the surrounding neighborhood by:
      i. Identifying an individual for individuals living in the surrounding neighborhood to contact to discuss a concern;
      ii. Requiring the identified individual to respond to a concern or complaint, even if the issue cannot be resolved; and

iii. Ensuring that requirements for residents and visitors related to parking, noise emanating from the sober living home, smoking, cleanliness of the public space near the sober living home, and loitering in front of the sober living home or near-by homes are established, known to residents, and enforced; and

b. Promote the safety of the surrounding neighborhood, to comply with A.R.S. § 36-2062(A)(3); and

3. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident that cover:
   a. Recordkeeping;
   b. Resident acceptance;
   c. Resident rights;
   d. Orientation of a resident to:
      i. The premises of the sober living home,
      ii. The resident's rights and responsibilities,
      iii. The prohibition of the possession of alcohol or illicit drugs at the sober living home,
      iv. Services offered by or coordinated through the sober living home,
      v. Drug and alcohol testing practices, and
      vi. Expectations about food preparation and chores;
   e. Drug and alcohol testing conducted by an independent testing facility certified under 42 C.F.R. 493 for the sober living home and other assessments of sobriety, including:
      i. The frequency of testing or assessment, based on the residents accepted; and
      ii. The compounds included in the testing panel or, if applicable, an assessment methodology, based on the sober living home's scope of services and residents accepted;
   f. Allowing the acceptance and retention as a resident of an individual:
      i. Who is receiving and will continue to receive medication-assisted treatment;
      ii. Who has a co-occurring behavioral health issue, as defined in A.A.C. R9-10-101; or
      iii. If included in the scope of services established according to subsection (A)(2), has a co-occurring medical condition;
   g. House meetings, including:
      i. Frequency;
      ii. Typical duration; and
      iii. Participation requirements, if applicable;
   h. The provision of services, including:
      i. Facilitating peer support activities;
      ii. If applicable, providing other services on the premises to support sobriety or improve independent living;
      iii. If applicable, coordinating the provision of services to support sobriety provided by other persons; and
      iv. Referring a resident to other persons for the provision of services to support sobriety;
   i. Residents' records, including electronic records if applicable;
   j. The establishment, updating, and enforcement of house rules, including:
      i. If applicable, curfews;
      ii. Requirements related to chores, smoking, and visitors; and
      iii. Requirements for the storage, security, and use of a resident's prescription medications or over-the-counter drugs;
   k. Management of all monies received or spent by the sober living home, including:
      i. Accounting for monies received by residents;
      ii. Prohibiting a requirement for an individual or resident to sign a document relinquishing the resident's public assistance benefits, such as medical assistance, case assistance, or supplemental nutrition assistance program benefits, as a condition of residency; and
      iii. Providing copy of the record of the resident's account to the resident or the resident's representative upon request;
   l. Specific steps for:
      i. A resident to file a complaint,
      ii. The sober living home to respond to a resident's complaint, and
      iii. The prevention of retaliation against a resident who files a complaint;
   m. How the licensee or the manager will respond to:
      i. A resident's loss of sobriety; or
      ii. A resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
   n. The provision of naloxone, including requirements for:
      i. Informing the residents, the manager, and any other staff of the availability and location of the naloxone on the premises of the sober living home;
      ii. Providing training to the manager and any other staff on the correct use of naloxone; and
      iii. Ensuring the naloxone provided is available and not beyond the listed expiration date; and
   o. Termination of residency, including:
      i. Planning for termination of residency when the services provided by the sober living home are no longer needed by a resident, including assisting the resident to find other housing;
      ii. Coordinating the relocation of a resident to a health care institution or another sober living home if the resident needs services outside the scope of services provided by the sober living home;
      iii. Coordinating the relocation of a resident to another sober living home or other housing option if the resident terminates residency; and
      iv. Addressing factors that may negatively impact the surrounding neighborhood.

C. A licensee shall:
1. Not act as a patient's representative; and
2. Ensure that a manager, an employee, or a family member of a manager or employee does not act as a resident's representative.

D. If a manager has a reasonable basis, according to A.R.S. § 46-454, to believe abuse or exploitation of a resident has occurred on the premises, the manager shall:
1. If applicable, take immediate action to stop the suspected abuse or exploitation;
2. Immediately report the suspected abuse or exploitation of the resident according to A.R.S. § 46-454;
3. Document:
   a. The suspected abuse or exploitation,

b. Any action taken according to subsection (D)(1), and
c. The report in subsection (D)(2); and
4. Maintain the documentation in subsection (D)(3) for at least 12 months after the date of the report in subsection (D)(2).

E. A manager shall notify:
1. A resident's representative, family member, or other emergency contact designated by the resident according to R9-12-202(C)(2):
a. Within one calendar day after:
i. The resident's death, or
ii. The resident has an illness or injury that requires immediate intervention by an emergency medical services provider or treatment by a health care provider; and
b. Within seven calendar days after the manager determines that a resident is:
i. Incapable of handling financial affairs, or
ii. Not complying with the residency agreement; and
2. The Department, in a Department-provided format, of a resident's death, within one working day after the resident's death, if the resident's death is required to be reported according to A.R.S. § 11-593.

F. If a sober living home provides or arranges transportation for residents, a manager shall ensure that the vehicle used for transportation:
1. Is in good working order, and
2. Has a seat belt for each occupant of the vehicle.

G. A manger shall ensure that the following are conspicuously posted in a sober living home:
1. The license of the sober living home;
2. The name and contact information for the individual or business organization controlling the sober living home; and
3. A statement of resident's rights, including:
a. The right to file a complaint about the manager or the sober living home,
b. How to file a complaint about the manager or the sober living home, and
c. The phone number for the unit in the Department responsible for licensing and monitoring the sober living home.

H. A licensee shall ensure that a personnel record is established for a manager and any other staff of a sober living home that includes the individual's:
1. Name;
2. Date of birth;
3. Contact telephone number; and
4. Documentation of:
a. Verification of skills and knowledge sufficient to carry out the sober living home's scope of services;
b. Training in the use of naloxone; and
c. If applicable:
i. Certification in cardiopulmonary resuscitation, and
ii. Compliance with subsection (B)(1)(b).

I. A licensee shall ensure that:
1. The manager or other staff of the sober living home is on the premises within 30 minutes after notification by the Department of the Department's presence at the sober living home; and
2. The Department is allowed immediate access to all:
a. Areas of the premises;
b. Information in records pertaining to the sober living home or residents, except as prohibited by 42 CFR, Part 2; and
c. Staff or residents of the sober living home who are on the premises.

J. If the Department notifies the licensee of noncompliance with requirements in A.R.S. Title 36, Chapter 18, Article 4, or this Chapter, the licensee shall:
1. Within 14 calendar days after the date of the Department's notice of noncompliance, establish a plan of correction, if applicable, for correction of a deficiency; and
2. Ensure that a deficiency listed on the plan of correction is corrected within 30 calendar days after the date of the plan of correction or within a time period the Department and the licensee agree upon in writing.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-202. Residency Agreements

A. Within three calendar days before or at the time of acceptance into a sober living home, an individual requesting to be a resident of the sober living home shall provide proof of sobriety to the manager of the sober living home.

B. A manager shall not accept or retain an individual as a resident of a sober living home if the individual:
1. Is not at least 18 years of age,
2. Cannot provide proof of sobriety, or
3. Needs more support to maintain sobriety than is within the scope of services for the sober living home.

C. Before or at the time of an individual's acceptance by a sober living home, a manager shall ensure that there is a documented residency agreement between the individual and the sober living home that includes:
1. The individual's name;
2. The name and phone number of an emergency point of contact, which may be a family member or another individual designated by the individual;
3. Information about the individual's:
a. Length of sobriety;
b. History of previous recovery activities; and
c. Source of referral to the sober living home, if applicable;
4. Terms of occupancy, including:
a. Date of occupancy or expected date of occupancy,
b. Resident responsibilities, and
c. Responsibilities of the sober living home;
5. The consequences of a loss of sobriety;
6. A description of the room for the individual to occupy;
7. A list of the services to be provided by the sober living home to a resident;
8. The fees to be charged to the individual for residency in the sober living home;
9. A list of the services available from the sober living home at an additional fee or charge and the associated fees or charges;
10. The policy for refunding fees, charges, or deposits;
11. The policy and procedure for a resident to terminate residency, including terminating residency because services were not provided to the resident according to the residency agreement;
12. The policy and procedure for a sober living home to terminate residency;
13. A statement that a resident has a right to file a complaint about the sober living home, manager, or licensee and a description of the complaint process;

14. A statement that a resident is expected to:
    a. Comply with the terms of the residency agreement and requirements established for residents according to R9-12-201(B)(2)(a)(iii) or R9-12-201(B)(3)(j);
    b. Maintain sobriety; and
    c. Participate in activities to improve life skills, support independent living, and promote recovery:
        i. Such as a treatment program, a self-help group, or another program to support sobriety and recovery; and
        ii. That may include job training, school, or looking for a job;
15. A statement that a sober living home may not require an individual to relinquish the individual's public assistance benefits, such as medical assistance, case assistance, or supplemental nutrition assistance program benefits, as a condition of residency;
16. A statement that a sober living home must notify a family member or other emergency contact of the individual, according to R9-12-201(E)(1), if the individual:
    a. Dies while a resident of the sober living home,
    b. Has an illness or injury that requires immediate intervention by an emergency medical services provider or treatment by a health care provider,
    c. Appears to be incapable of handling financial affairs, or
    d. Is not complying with the residency agreement;
17. The name and contact information for the individual or business organization controlling the sober living home;
18. The signature of the individual and the date signed; and
19. The manager's signature and date signed.

D. A manager shall:
1. Before or at the time of an individual's acceptance by a sober living home, provide to the resident or resident's representative a copy of:
    a. The residency agreement in subsection (C), and
    b. Resident's rights; and
2. Maintain the original of the residency agreement in subsection (C) in the resident's record.

E. A manager may terminate residency of a resident as follows:
1. Without notice, if the resident exhibits behavior that is an immediate threat to the health and safety of the resident or other individuals in a sober living home;
2. With a seven-calendar-day written notice of termination of residency:
    a. For nonpayment of fees, charges, or deposit; or
    b. Under the conditions in subsection (B)(3); or
3. With a 14-calendar-day written notice of termination of residency, for any other reason.

F. A manager shall ensure that a written notice of termination of residency includes:
1. The date of notice;
2. The reason for termination of residency;
3. If termination of residency is because the resident needs more support to maintain sobriety than is within the scope of services for the sober living home, a description of why the sober living home cannot meet the resident's needs;
4. The policy for refunding fees, charges, or deposits; and
5. The deposition of a resident's fees, charges, and deposits.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-203. Resident Rights

A. A manager shall ensure that:
1. A resident is not subjected to:
    a. Abuse,
    b. Exploitation,
    c. Coercion,
    d. Manipulation,
    e. Sexual abuse,
    f. Sexual assault, or
    g. Retaliation for submitting a complaint to the Department or another entity; and
2. A resident or the resident's representative is informed of and given the opportunity to ask questions about:
    a. The residency agreement,
    b. The costs associated with residency,
    c. The resident's rights and responsibilities,
    d. The prohibition of the possession of alcohol or illicit drugs at the sober living home,
    e. Drug and alcohol testing and other assessments of sobriety,
    f. The consequences of loss of sobriety, and
    g. The complaint process.

B. A resident has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive services that support the resident's sobriety, including, if applicable, continuing to receive medication-assisted treatment while a resident;
3. To have a secure place to store personal belongings, medications, or other personal items to deter misappropriation by another individual;
4. To be able to gain access to the sober living home at any time while a resident;
5. To have access to all areas of the sober living home's premises, except for:
    a. The bedrooms and secure storage locations of other residents,
    b. The bedroom and secure storage locations of the manager or other staff, and
    c. Areas of the sober living home used as the manager's office or for storage of records or supplies for assessment of sobriety;
6. To have access to meals prepared in the sober living home;
7. To review, upon written request, the resident's own record; and
8. To receive assistance in locating another place to live if the resident's record indicates that the resident:
    a. No longer needs the services of a sober living home, or
    b. Needs more services and support to maintain sobriety than the sober living home is authorized to provide.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-204. Resident Records

A. A manager shall ensure that a resident record is established and maintained for each resident that includes:
1. The original of the residency agreement in R9-12-202(C);
2. The date the resident received orientation to the sober living home, as required by R9-12-205(A);
3. A copy of each drug and alcohol test performed on the resident by an independent testing facility, including the date of the test and the test result;

4. Any other assessments of sobriety performed on the resident, including:
   a. The date of the assessment,
   b. A description of the assessment,
   c. The result of the assessment, and
   d. The name of the individual conducting the assessment;
5. Documentation of the resident's attendance at and participation in treatment, self-help groups, and other supports that promote recovery, including:
   a. The name or a description of the support towards recovery, and
   b. The date of the resident's attendance;
6. A current list of medications taken by the resident and the resident's medical conditions;
7. An account of monies received from the resident and any expenditures made specific to the resident;
8. Documentation of any complaints made by or about the resident and the outcome of each complaint;
9. Documentation of any notification made according to R9-12-201(E) about the resident; and
10. If applicable, documentation related to termination of residency, including:
    a. Whether termination of residency was initiated by the resident or the sober living home,
    b. The reason for termination of residency,
    c. Any assistance the resident received in locating another place to live, and
    d. The date the residency ended.

B. A licensee shall ensure that a resident's record is:
1. Protected from loss, damage, or unauthorized use;
2. Available for review by the resident or the resident's representative, within 24 hours after a request; and
3. Maintained for at least 12 months after the termination of residency.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-205. Sober Living Home Services

A. Within 24 hours after an individual becomes a resident of a sober living home, a licensee shall ensure that the resident receives orientation to the sober living home and premises, according to policies and procedures, that includes:
1. The location of all exits from the sober living home and the route to evacuate the sober living home in case of an emergency;
2. The location of the first-aid kit required in R9-12-206(1);
3. The use of the kitchen of the sober living home, including:
   a. Operation of the appliances,
   b. Use of food storage areas, and
   c. Removal of garbage and refuse;
4. The use of the washing machine and dryer;
5. The dates, time, and location of house meetings;
6. The prohibition of the possession of alcohol or illicit drugs at the sober living home;
7. Review and discussion of specific resident requirements, as applicable, such as curfews, smoking, visitors, signing in or out of the sober living home, meal preparation schedule, chore schedule, or other house rules;
8. Review and discussion of requirements related to R9-12-201(B)(2)(a)(iii); and
9. The information required according to R9-12-201(B)(3)(n).

B. A manager shall:
1. Conduct drug and alcohol testing according to policies and procedures;
2. Assist a resident to identify and participate in programs to support sobriety and recovery;
3. Provide to a resident information about community resources, such as nearby bus routes, grocery stores, department stores, other places to obtain food or other personal items, schools, libraries or other locations providing access to computers, or other locations providing items or services a resident may need.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-206. Emergency and Safety Standards

A manager shall ensure that:
1. A first aid kit is available at a sober living home sufficient to meet the needs of residents;
2. Naloxone is available and accessible to the manager, staff, and residents of the sober living home;
3. A smoke detector and, if there is a gas line in the sober living home, a carbon monoxide detector are installed in:
   a. A bedroom used by a resident,
   b. A hallway in a sober living home, and
   c. A sober living home's kitchen;
4. The smoke detector and, if applicable, carbon monoxide detector in subsection (3) are:
   a. Either battery operated or, if hard-wired into the electrical system of the sober living home, have a back-up battery; and
   b. In working order;
5. A fire extinguisher that is labeled as rated at least 1A-10-BC by the Underwriters Laboratories:
   a. Is maintained in the sober living home's kitchen;
   b. If a disposable fire extinguisher, is replaced when its indicator reaches the red zone; and
   c. If a rechargeable fire extinguisher:
      i. Is serviced at least once every 12 months, and
      ii. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher;
6. An evacuation path is conspicuously posted on each hallway of each floor of the sober living home;
7. A written evacuation plan is maintained and available for use by the manager, any other staff of the sober living home, and any resident in a sober living home;
8. An evacuation drill is conducted at least once every six months; and
9. A record of an evacuation drill required in subsection (8) is maintained for at least 12 months after the date of the evacuation drill.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

R9-12-207. Environmental and Physical Plant Requirements

A. A licensee shall ensure that a sober living home:
1. Is free of any plumbing, electrical, ventilation, mechanical, chemical, or structural hazard that may result in physical injury or illness to an individual or jeopardize the health or safety of a resident;
2. Has a kitchen for use by the manager and residents of the sober living home;
3. Has a living room accessible at all times to a resident;

4. Has a dining area furnished for group meals that is accessible to the manager, residents, and any other individuals present in the sober living home;
5. For each five residents of the sober living home, has at least one bathroom equipped with:
   a. A working toilet that flushes and has a seat;
   b. A sink with running water accessible for use by a resident; and
   c. A working bathtub or shower with a slip-resistant surface;
6. Has heating and cooling systems that maintain the sober living home at a temperature between 70° F and 84° F at all times, unless individually controlled by a resident;
7. Has a supply of hot and cold water that is sufficient to meet the personal hygiene needs of residents and the cleaning requirements in this Article;
8. Has a working washing machine and dryer that is accessible to a resident; and
9. Has a working telephone that is accessible to a resident.

B. If the sober living home has a swimming pool, a licensee shall ensure that:
1. The swimming pool is equipped with the following:
   a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
      i. A removable strainer,
      ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
      iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
   b. An operational cleaning system;
2. The swimming pool is enclosed by a wall or fence that:
   a. Is at least five feet in height as measured on the exterior of the wall or fence;
   b. Has no vertical openings greater that four inches across;
   c. Has no horizontal openings, except as described in subsection (B)(2)(e);
   d. Is not chain-link;
   e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
   f. Has a self-closing, self-latching gate that:
      i. Opens away from the swimming pool,
      ii. Has a latch located at least 54 inches from the ground, and
      iii. Is locked when the swimming pool is not in use; and
3. A life preserver or shepherd's crook is available and accessible in the swimming pool area.

C. A licensee shall ensure that:
1. A bedroom for use by a resident:
   a. Is separated from a hall, corridors, or other habitable room by floor-to-ceiling walls containing no interior openings except doors and is not used as a passageway to another bedroom or habitable room;
   b. Provides sufficient space for an individual in the bedroom to have unobstructed access to the bedroom door;
   c. Has at least one openable window or door to the outside for use as an emergency exit;
   d. Contains for each resident using the bedroom:
      i. A separate, adult-sized, single bed or larger bed with a clean mattress in good repair; and
      ii. Clean bedding appropriate for the season; and
   e. If used for:
      i. Single occupancy, contains at least 60 square feet of floor space; or
      ii. Two or more residents, has an area of at least 50 square feet per resident;
2. A mirror is available to a resident for grooming; and
3. Each resident has individual storage space available for personal possessions and clothing.

D. A manager shall ensure that:
1. A sober living home:
   a. Is maintained free of a condition or situation that may cause a resident or another individual to suffer physical injury;
   b. Has equipment and supplies to maintain a resident's personal hygiene that are accessible to the resident;
   c. Is clean and free from accumulations of dirt, garbage, and rubbish; and
   d. Implements a pest control program to minimize the presence of insects and vermin at the sober living home;
2. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the sober living home;
3. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the sober living home;
4. A resident does not share a bedroom with an individual who is not a resident;
5. A resident's bedroom is not used to store anything other than the furniture and articles used by the resident and the resident's belongings;
6. A resident has a lockable or other secure storage location for medications, valuables, or other personal belongings to deter misappropriation by other individuals that is accessible only by the resident and the manager;
7. If pets or animals are allowed in the sober living home, pets or animals are:
   a. Controlled to prevent endangering the residents and to maintain sanitation;
   b. Licensed consistent with local ordinances; and
   c. For a dog or cat, vaccinated against rabies;
8. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
   a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or E. coli bacteria;
   b. If necessary, corrective action is taken to ensure the water is safe to drink; and
   c. Documentation of testing is retained for at least 12 months after the date of the test; and
9. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information to promote good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of educating children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in coordinating local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in enforcing the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes and behavioral-supported group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that a licensing period shall not be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants.

The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum,

hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for

consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply

for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the

designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-2062. Licensure; standards; civil penalties; inspections; use of title

A. The director shall adopt rules to establish minimum standards and requirements for the licensure of sober living homes in this state necessary to ensure the public health, safety and welfare. The director may use the current standards adopted by any

recognized national organization approved by the department as guidelines in prescribing the minimum standards and requirements under this subsection. The standards shall include:

1. A requirement that each sober living home to develop policies and procedures to allow individuals who are on medication-assisted treatment to continue to receive this treatment while living in the sober living home.

2. Consistent and fair practices for drug and alcohol testing, including frequency, that promote the residents' recovery.

3. Policies and procedures for the residence to maintain an environment that promotes the safety of the surrounding neighborhood and the community at large.

4. Policies and procedures for discharge planning of persons living in the residence that do not negatively impact the surrounding community.

5. A good neighbor policy to address neighborhood concerns and complaints.

6. A requirement that the operator of each sober living home have available for emergency personnel an up-to-date list of current medications and medical conditions of each person living in the home.

7. A policy that ensures residents are informed of all sober living home rules, residency requirements and resident agreements.

8. Policies and procedures for the management of all monies received and spent by the sober living home in accordance with standard accounting practices, including monies received from residents of the sober living home.

9. A requirement that each sober living home post a statement of resident rights that includes the right to file a complaint about the residence or provider and information about how to file a complaint.

10. Policies that promote recovery by requiring residents to participate in treatment, self-help groups or other recovery supports.

11. Policies requiring abstinence from alcohol and illicit drugs.

12. Procedures regarding the appropriate use and security of medication by a resident.

13. Policies regarding the maintenance of sober living homes, including the installation of functioning smoke detectors, carbon monoxide detectors and fire

extinguishers and compliance with local fire codes applicable to comparable dwellings occupied by single families.

14. Policies and procedures that prohibit a sober living home owner, employee or administrator from requiring a resident to sign any document for the purpose of relinquishing the resident's public assistance benefits, including medical assistance benefits, cash assistance and supplemental nutrition assistance program benefits.

15. Policies and procedures for managing complaints about sober living homes.

16. Requirements for the notification of a family member or other emergency contact designated by a resident under certain circumstances, including death due to an overdose.

B. The licensure of a sober living home under this article is for one year. A person operating a sober living home in this state that has failed to attain or maintain licensure of the sober living home shall pay a civil penalty of up to one thousand dollars for each violation.

C. To receive and maintain licensure, a sober living home must comply with all federal, state and local laws, including the Americans with disabilities act of 1990.

D. A treatment facility that is licensed by the department for the treatment of substance use disorders and that has one or more sober living homes on the same campus as the facility's program shall obtain licensure for each sober living home pursuant to this article.

E. Once the director adopts the minimum standards as required in subsection A of this section, a person may not establish, conduct or maintain in this state a sober living home unless that person holds a current and valid license issued by the department or is certified as prescribed in section 36-2064. The license is valid only for the establishment, operation and maintenance of the sober living home. The licensee may not:

1. Imply by advertising, directory listing or otherwise that the licensee is authorized to perform services more specialized or of a higher degree of care than is authorized by this article and the underlying rules for sober living homes.

2. Transfer or assign the license. A license is valid only for the premises occupied by the sober living home at the time of its issuance.

36-2063. Fees; licensure; inspections; complaints; investigation; civil penalty; sanctions

A. The department shall establish fees for initial licensure and license renewal and a fee for the late payment of licensing fees that includes a grace period. The department shall deposit, pursuant to sections 35-146 and 35-147, ninety percent of the fees collected pursuant to this section in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section in the state general fund.

B. On a determination by the director that there is reasonable cause to believe a sober living home is not adhering to the licensing requirements of this article, the director and any duly designated employee or agent of the director may enter on and into the premises of any sober living home that is licensed or required to be licensed pursuant to this article at any reasonable time for the purpose of determining the state of compliance with this article, the rules adopted pursuant to this article and local fire ordinances or rules. Any application for licensure under this article constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If an inspection reveals that the sober living home is not adhering to the licensing requirements established pursuant to this article, the director may take action authorized by this article. Any sober living home whose license has been suspended or revoked in accordance with this article is subject to inspection on application for relicensure or reinstatement of license.

C. The director may impose a civil penalty on a person that violates this article or the rules adopted pursuant to this article in an amount of not more than five hundred dollars for each violation. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. If a person requests a hearing to appeal an assessment, the director may not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days for which the violation has been documented by the department.

D. The department may impose sanctions and commence disciplinary actions against a licensed sober living home, including revoking the license. A license may not be suspended or revoked under this article without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

E. The department may contract with a third party to assist the department with licensure and inspections.

36-2064. Certified sober living homes

A. Notwithstanding any other provision of this article, a sober living home in this state that is certified by a certifying organization may operate in this state and receive referrals pursuant to section 36-2065. A sober living home certification is in lieu of licensure until the sober living home is licensed. A certified sober living home shall apply to the department for licensure within ninety days after the department's initial licensure rules are final. The department shall notify the certifying organization when the department's initial licensure rules are final.

B. In lieu of an initial on-site licensure survey and any annual on-site survey, the department shall issue a license to a sober living home that submits an application prescribed by the department and that meets the following requirements:

1. Is currently certified as a sober living home by a certifying organization.

2. Meets all department licensure requirements.

DUKES LAW, PLLC

5527 N. 25th Street
Phoenix, AZ 85016
602.320.8866

VIA EMAIL

Ms. Jessica Klein, Chair and ADAO General Counsel
Ms. Elizabeth Alvarado-Thorson, ADAO Director
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, AZ 85007

September 30, 2024

RE: October 1, 2024 Public Meeting of Governor's Regulatory Review Council (the "Council") - Consent Agenda Item No. 6, Department of Health Services, Title 9, Chapter 12, Articles 1 & 2, Sober Living Home Rules Five-Year Review Report (the "SLH Report") - Request to Remove from Consent Agenda and Request for Continuance

Dear Director Alvarado-Thorson, Chair Klein, and Members of GRRC:

On behalf of the Alliance of Recovery Residences, an Arizona non-profit corporation, we respectfully request that the Council remove the above-referenced Sober Living Home Rules Five-Year Review Report (the "SLH Report") from the October 1, 2024 consent agenda, take public comment at the October 1st hearing, and vote to return the SLH Report to the Arizona Department of Health Services ("ADHS") for non-compliance with A.R.S. § 41-1056(A). The SLH Report also demonstrates an attempt by ADHS to circumvent the legislative process by adopting new rules which were recently rejected by the Arizona Legislature during the 2024 session. Finally, the Alliance of Recovery Residences and sober living home stakeholders were not aware of this SLH Report until days before the October 1, 2024 Council hearing. Upon information and belief, no public notice regarding the SLH Report was provided on the ADHS website in advance of the hearing.

I. The Council's Authority to Return the SLH Report to ADHS.

Section R1-6-305 of A.A.C. authorizes the Council to vote to return, in whole or in part, a five-year review report after identifying the manner in which the report does not meet the standards of A.R.S. § 41-1056(A). If a report is returned, the Council must then schedule a deadline by which the agency shall submit a revised report, together with a letter responding to the Council's explanation for return of the five-year report and an explanation as to how the changes ensure that the report meets the standards in A.R.S. § 41-1056(A).

II. SLH Report Should be Returned to ADHS for Non-Compliance with Five-Year Review Report Requirements in A.R.S. § 41-1056(A).

The SLH Report fails to comply with the requirement in A.R.S. § 41-1056(A) as follows:

A. A.R.S. § 41-1056.A.2 - The SLH Report fails to include written criticisms of the rule received during the previous five years.

The SLH Report inaccurately states that ADHS has received no written criticisms of the rules in the last five years. For instance, in 2020, the Arizona Recovery Housing Association filed a HUD complaint against ADHS, challenging the good neighbor policies and procedures in A.A.C. § R9-12-201.B.2 and the licensing fee amounts set forth in A.A.C. § R9-12-103.A.6. The HUD complaint has resulted in an on-going Department of Justice investigation. *See* Exhibit "A" attached hereto.

We respectfully request that the SLH Report be returned to ADHS with direction to disclose all written criticisms of the rules received during the previous five years, including all written criticisms received in lawsuits and correspondence with ADHS staff.

B. A.R.S. § 41-1056.A.3 – The SLH Report fails to include an analysis of existing statutes that authorize ADHS's proposal of new rules.

The SLH Report fails to include an analysis of existing statutes that authorize ADHS's proposal of the new rules. For example, in A.A.C. R9-12-201, ADHS is proposing a new rule requiring the licensee to obtain documentation verifying that the sober living home manager has maintained sobriety for a year. ADHS has no statutory authority to impose this documentation requirement, and it is unclear what documentation or testing is available to provide such verification. Furthermore, requiring a year of sobriety as a condition of employment is discriminatory and violates Federal labor laws. The one-year sobriety requirement for sober living home managers in R9-12-201 should be repealed as unlawful.

We respectfully request that the SLH Report be returned to ADHS with direction to disclose statutes that authorize each of the proposed rules, and to analyze whether the existing or proposed rules violate the Fair Housing Act or Federal labor laws.

C. A.R.S. § 41-1056.A.12 – The SLH Report fails to identify corresponding federal laws and whether ADHS has statutory authority to exceed the requirements of that federal law.

The SLH Report inaccurately states that "ADHS indicates there are no corresponding federal laws" with regard to the sober living home rules. The disabled residents living in sober living homes are protected by the Fair Housing Act. We respectfully request that the SLH Report be returned to ADHS with direction to disclose the Fair Housing Act as a corresponding federal law and to analyze whether the existing rules or proposed rules exceed requirements of the Fair Housing Act.

III. SLH Report Attempts to Circumvent the Legislative Process by Recommending New Rules that were Rejected by the Arizona Legislature during the 2024 Session.

The SLH Report attempts to circumvent the legislative process by recommending new rules that were recently rejected by the Arizona Legislature during the 2024 Session. For instance, in A.A.C. R9-12-103(A)(1)(j), the existing rule requires that the applicant provide an attestation as part of its license application that the sober living home is in compliance with local zoning ordinances, building codes, and fire codes. ADHS is now proposing that a new rule be adopted requiring the applicant to provide verification (i.e. documentation) that the home is in compliance with local zoning ordinances and codes. This new verification requirement was recently proposed during the 2024 legislative session in House Bill 2317 and Senate Bill 1361, both of which failed to pass.

We respectfully request that the SLH Report be returned to ADHS with direction to disclose which of the proposed rules are similar to proposed statutory language from the failed HB 2317 and SB 1361, together with an analysis of the existing statutory authority that would allow ADHS to enact such rules.

Very truly yours,

/s/ Heather N. Dukes

Heather N. Dukes, Esq.
602.320.8866 | hdukes@dukeslawaz.com

Enclosures

EXHIBIT A

RETURN RECEIPT REQUESTED ELECTRONICALLY

2960 Pelham Parkway #249
Birmingham AL 35124

USPS CERTIFIED MAIL

00000012 3 0.8

HEMS
00000012

9314 8000 3860 0221 5298 03

IMPORTANT HUD NOTICE

ARIZONA RECOVERY HOUSING ASSOCIATION (AZRHA)
5101 N 17TH AVE
PHOENIX AZ 85015-3316

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity – Region IX
One Sansome Street, Suite 1200
San Francisco, CA 94104-4430
Voice: (800) 347-3739 TTY: (415) 489-6564
TTY: (415) 489-6564

March 20, 2020

Arizona Recovery Housing Association (AzRHA)
5101 N. 17th Ave.
Phoenix, AZ 85015

Dear Complainant:

Subject: Housing Discrimination Complaint
AzRHA v. State of Arizona
HUD File No.: 09-20-0081-8
Section 504 Case No.: 09-20-0081-4
ADA Case No.: 09-20-0081-D

Your complaint, alleging one or more discriminatory housing practices, was officially filed on March 19, 2020 as a complaint under the Federal Fair Housing Law, 42 U.S.C. Sections 3601-3619. For your records, we are enclosing a copy of your complaint, and, as required by law, a copy has been sent to the respondent(s).

The purpose of this letter is to inform you of: 1) the rights you have during the processing of this complaint, 2) the rights each respondent has in responding to this complaint, and 3) the steps the U.S. Department of Housing and Urban Development (the Department) will take to determine whether the complaint has merit.

Since a respondent organization is a recipient of federal financial assistance, the complaint has also been accepted and will be investigated by the Department under Section 504 of the Rehabilitation Act of 1973 as amended.

Section 504 states:

No otherwise qualified individual with handicaps in the United States… shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Since a respondent is also a "public entity" as defined by Section 201 of the Americans with Disabilities Act (ADA), the complaint has also been accepted and will be investigated by the Department under Title II of the ADA as amended.

Title II states:

Subject to the provisions of this title, no qualified individual with disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity.

In order to ensure that the Department informs you properly of the law's requirements, this notification letter contains language required by the law. A similar letter is used to notify all parties whenever a formal complaint has been filed with the Department under the Federal Fair Housing Law.

We are governed by federal law, which sets out what steps we must take when a formal complaint is filed. The law also includes steps that each respondent can take to answer or refute the allegations of this complaint.

Under federal law, a respondent can file an answer to this complaint or any amendment made to this complaint within 10 calendar days of receipt of the Department's notification letter to him or her. Each respondent's answer must be signed and affirmed that the response is truthful by including the statement "I declare under penalty of perjury that the foregoing is true and correct." A respondent can, with the agreement of the Department, amend his or her answer at any time during the investigation.

Our responsibility under the law is to undertake an impartial investigation and, at the same time, encourage all sides to reach an agreement, where appropriate, through conciliation. The law requires us to complete our investigation within 100 days of the date of the official filing of the complaint. If we are unable to meet the 100-day requirement for issuing a determination, the law requires that we notify you and the respondent(s) and explain the reasons why the investigation of the complaint is not completed. All evidence gathered during the investigation will become part of the investigative record.

In handling this complaint, we will conduct an impartial investigation of all claims that the Fair Housing Act has been violated. If the investigation indicates that there is no evidence establishing jurisdiction, the case will be dismissed. At any point, you can request that our staff assist you in conciliating (or settling) this complaint with the respondent(s). If the case is not resolved, we will complete our investigation and decide whether the evidence indicates that there has been a fair housing violation. If the parties involved have not reached an agreement to settle the complaint, the Department will issue a determination as to whether there is reasonable cause to believe a discriminatory housing practice has occurred.

If our investigation indicates that there is reasonable cause to believe that an unlawful discriminatory housing practice has occurred, the Department may issue a charge. If the investigation indicates there is no reasonable cause to believe that discrimination has occurred, the complaint will be dismissed. In either event, you will be notified in writing.

If the determination is one of reasonable cause, the notification will advise you and the respondent(s) of your rights to choose, within 20 days, whether you wish to have the case heard

by an Administrative Law Judge, or to have the matter referred for trial in the appropriate U.S. District Court.

Under federal law, even if the Department dismisses the complaint, you still have the right to bring an individual suit under the Federal Fair Housing Law. You may file your lawsuit in an appropriate federal, state or local court within two years of the date of the alleged discriminatory practice or of the date when a conciliation agreement has been violated. The law does not count, as part of the two-year period, any of the time when a proceeding is pending with the Department. You also have the legal right to file a lawsuit in court, even if your complaint formed the basis for a charge, as long as an Administrative Law Judge has not started a hearing on the record with respect to the charge.

There may be other applicable federal, state or local statutes under which you and/or the respondent(s) may initiate court action. You may consult a private attorney in this regard.

The law also requires us to notify you that section 818 of the Fair Housing Act makes it unlawful for a respondent or anyone else to coerce, intimidate, threaten, or interfere with you in your exercise or enjoyment of, any right granted or protected under the Federal Fair Housing Law. The law also makes it illegal for anyone to coerce, threaten or interfere with you for your having aided or encouraged any other person in the exercise or enjoyment of, any right or protection granted to them under the Federal Fair Housing Law.

If you have any questions regarding this case, please contact Gregory Crespo, Los Angeles Enforcement Branch Chief at (213) 534-2554. Please refer to the case number at the top of this letter in those contacts, and keep this office advised of any change of your address or telephone number. We hope this information has been helpful to you.

Sincerely,

Anné Quesada

Anné Quesada
Regional Director
Office of Fair Housing and
Equal Opportunity

Enclosures

INVITATION TO CONCILIATION

Conciliation is a voluntary, non-binding and confidential process to help Complainant and Respondent achieve a resolution of the fair housing complaint accompanying this invitation. The Office of Fair Housing and Equal Opportunity (FHEO) is committed to working impartially with you to reach a settlement that may benefit everyone. A conciliated settlement is not an admission by a Respondent that the law has been violated, nor is it an admission by a Complainant that the complaint does not have merit. Conciliation is a way to resolve a dispute without the completion of a formal investigation.

The Conciliator is Impartial. The Conciliator is not a judge, or advocate, or there to advise anyone or decide anything. The Conciliator only helps persons create a resolution to the dispute.

A Settlement Agreement will be your agreement. It must meet your needs, the needs of other parties, as well as be in the public interest.

Conciliation requires Good Faith. This means keeping an open mind, being willing to listen, being flexible, and making a sincere effort to resolve the dispute. Good faith is needed from both Complainant and Respondent.

We encourage and invite your participation and commend your willingness to work with us to reach a conciliated settlement to this fair housing complaint.

CONCILIATION UNDER THE FAIR HOUSING ACT

HUD is *required*, from the time a Fair Housing Act complaint is filed, to give the parties a chance to reach a satisfactory settlement through conciliation.

Parties' Rights:

- Confidentiality. Nothing said or done during the course of conciliation can be used in a subsequent hearing or trial regarding the alleged violation.
- Legal Counsel. Attorneys may represent Parties.
- Voluntary Nature of Conciliation. Participation in conciliation is entirely voluntary. There is no penalty for declining to settle through conciliation.

Role of the HUD conciliator:

- is a neutral participant seeking to facilitate a mutually agreeable settlement;

- will inform the parties of their rights during conciliation;
- will inform the parties about the process, and help to structure negotiation arrangements in which the parties can have confidence;
- may provide interpretations of the Act to permit the parties to bargain from informed positions;
- may describe the evidence gathered up to that time, but only to permit the parties to bargain from informed positions;
- conveys offers between the parties;
- prepares the Conciliation Agreement;
- may describe the penalties for violations, but will not comment on the likelihood that they will be imposed; and
- will not discuss the probable outcome of the case.

Effect of Agreement. A formal conciliation agreement, which the Act requires to be in writing and approved by HUD, will terminate the complaint. It ends the Respondent's potential liability and the Complainant's right to pursue allegations that could be filed with HUD.

Nature of Agreement. The essential terms of the agreement will be those negotiated by the parties. The parties may agree to refer compensation matters to an arbitrator. The agreement will also include standard provisions in the public interest (for example, concerning monitoring and reporting).

HUD's Role. By approving the agreement, HUD acknowledges that its terms serve the public interest.

Role of the Department of Justice. The Justice Department will enforce the Conciliation Agreement in the event of a breach.

ORGANIZATIONAL DAMAGES WORKSHEET

NAME: _____

HUD INQUIRY NUMBER: _____

USE ADDITIONAL SHEETS IF NECESSARY.

Please provide information below so that we can better assess your damages and your standing to file. Your information will need to establish that you diverted resources in response to the discovery of discrimination, or that the respondent's conduct frustrated your mission in some manner. You do not have to return this worksheet with your signed complaint if the delay would be substantial. We will want this information at your earliest possible convenience.

A diversion cannot include litigation expenses or the filing of any sort of complaint with a court or government administrative agency.

Documentation of injury incurred resulting from frustration of mission includes expenses such as (for a fair housing education and training program) providing additional training to housing providers to counteract a known practice of the respondent's that is illegal under fair housing laws, (for a housing referral program) finding different referrals for housing when referral to the respondent was discovered to be futile, and (for a fair housing enforcement program) how your organization was impaired in its role of facilitating open housing.

In summary, you must be able to show how your organization did something different that it would not have otherwise done as part of your normal operating program as a result of the discovery of the allegedly discriminatory conduct.

If you have not already done so, please provide copies of all documents related to this claim, including any documents related to tests, investigation, or research. Testing documentation would include the testing reports, debriefing notes, tester instructions, and logs. These documents should also include any failed tests, negative tests, phone contacts, or any other contacts with the respondents or any other party related to the claim.

In order to calculate damages as well as assess the intangible nature of your efforts concerning this matter, please provide the following information.

1. What is the total dollar amount of your annual budget?

2. Please list the programs funded under your budget, giving dollar amounts expended in each program. Please state what dollar amounts were diverted from any of these programs to address the discrimination, which is addressed in the subject complaint.

3. What is your organization's mission? Where is any mission statement located (e.g., in articles of incorporation, or by-laws)? Please provide a copy of any mission statement, a citation of its source, and the date it was established.

4. Please list your instances of diversion of resources, stating for each item the names of personnel involved, the time spent, the dates this time was spent, the nature of the transaction, how this was related to addressing the discrimination in question if not already apparent, and the value in dollars of this diversion. Please be sure to address any of the following issues.

   a. Has the organization investigated the subject claim in any way? If so, please itemize dates, names of testers or investigators, their compensation, the time spent, and the nature of activities undertaken in the subject claim. Send all reports, notes, instructions, logs, or any other document related to this claim.

   b. Please state the salary, stipend, or other compensation for the test coordinator, other staff, and testers employed in the subject claim. In the case of salaries, please itemize the date, activities, and time spent by the employee on the subject claim.

   c. Please state whether you rent office space, and the monthly rental amount. Please also state how any of these items were involved in the subject claim.

   d. Please state what other facilities owned or rented by the organization were used in subject claim (e.g., vehicles, computers, office supplies, phones, etc.).

5. Please state whether the use of organizational resources was in response to a complaint filed in your office by an aggrieved person who is not a member of your staff. If so, please provide name, contact information, nature of allegations, and dates of transactions for this complainant. This may be contained in a log maintained for this claim.

6. If this discrimination was discovered through an audit of real estate, please describe how your diversion of resources in this case was outside of your normal operating procedures. What did you do in this case that you were not already planning on doing in your audit program? Please be sure to address the following issues.

   a. To what issue of discrimination presented in your community does this audit respond? How and when did you become aware of this practice? Please identify and give contact information for the persons involved in establishing the need for this audit.

   b. How were the properties selected, and what methodology was employed so that the issue of discrimination presented in your community was addressed?

7. If discrimination was discovered through means other than from an aggrieved person who is not a member of your staff, or through an audit, please describe how this occurred.

8. Has the organization contacted the respondent(s) for any reason (e.g., to attempt resolution, interview, notify that discrimination appears to exist, etc.)? If so, please

itemize dates, names of staff involved, their compensation, the time spent, and the nature of activities undertaken in the subject claim.

9. Itemize any research undertaken to discover the ownership of the property, the identity of the designers or constructors of the property in design and construction cases, or any other research other than through the use of testers or investigators. Please give the dates, the time spent, the personnel involved, the nature of the research, and the results.

10. Please describe, if applicable, how the respondent's actions have frustrated any program you administer. Please provide an itemized list of what efforts you undertook to remedy this frustration. Include any training sessions or advertising campaigns undertaken to advise the community that the actions such as those taken by the respondent are discriminatory. Also describe how any clients (including any clients other than those complaining about the respondent's practices) of yours have been unable to receive benefits in any of your programs due to the frustration of that program by the respondent's actions.

11. If not already addressed above, please list any other items of diversion of resources or frustration of mission related to the subject claim by date, time spent, name of personnel responsible, their position in the organization, the nature of the transaction, and why this may have been necessary to undertake to address the discrimination (if such is not already apparent).

Please be aware that a line of federal cases establishes the issues concerning the standing and nature of damages of organizations filing under the federal Fair Housing Act. This Worksheet is designed to collect information, which may be relevant to the determination of standing and damages in light of these cases. If you would like more information about these cases, they are listed below with citations to official reports and to paragraph numbers in Fair Housing-Fair Lending (Aspen Publishers).

Fair Housing of Marin v. Jack Combs, 285 F.3d 899 (9th Cir. April 9, 2002) ¶16,602

Inland Mediation Board v. City of Pomona, et al., 158 F.Supp.2d 1120 (CD Cal 2001)

Central Alabama Fair Housing Center, Inc. v. Lowder Realty Co., Inc, 236 F.3rd 629, 2000 U.S. App. LEXIS 33525 (11th Cir 2000) ¶2.4 (Feb. 2001 FH-FL Bulletin)

Fair Housing of Marin v. Combs, No C 97-1247 MJJ (ND Cal 3-29-2000) ¶16,430

Alexander v. Riga, 208 F.3rd 419 (3rd Cir. 2000)

Project Sentinel v. Evergreen Ridge, 40 F.Supp.2d 1136 (N.D. Cal. 1999) ¶16,324

United States v. Rock Springs Vista Development Corp., 1999 WL 1491621 (D. Nev. 1999)

Fair Housing Council v. Montgomery Newspapers, 141 F.3d 71 (3d Cir 1998) ¶16,275

Fair Housing Council v. Main Line Times, 141 F.3rd 439 (3d Cir 1998) ¶16,276

Fair Housing Council v. Mercury Newspapers, 141 F.3d 71 (E.D. Pa. 1998) ¶16,326

Fair Housing Council v. Mercury Newspapers, (unpublished) (E.D. Pa. 1999) ¶16,327

Arkansas ACORN Fair Housing, Inc. v. Greystone Dev't, Ltd., 160 F.3rd 433 (8th Cir 1998) ¶16,315

Ragin v. Harry Macklowe Real Estate, (2d Cir 1993) 6 F.3d 898, 905, ¶15,865

Hooker v. Weathers, (6th Cir 1993) 990 F.2d 913, 915, ¶15,831

City of Chicago v. Matchmaker, (7th Cir 1992) 982 F.2d 1086, ¶15,810

City of Bellwood v. Dwivedi, 895 F.2d 1521 (7th Cir 1990) ¶15,626

Havens Realty v. Coleman, 455 U.S. 363 (1982)

Baker v. Carr, 369 U.S. 186, 204 (1962)

cc: Steve G. Polin
The Law Offices of Steven G. Polin
3034 Tennyson St. N.W.
Washington, DC 20015

Housing Discrimination Complaint

Case Number: 09-20-0081-8

1. Complainants:

Arizona Recovery Housing Association (AzRHA)
5101 N. 17th Ave.
Phoenix, AZ 85015

2. Complainant Representatives:

Steve G. Polin
The Law Offices of Steven G. Polin
3034 Tennyson St. N.W.
Washington, DC 20015

3. Other Aggrieved Parties:

4. The following is alleged to have occurred or is about to occur:

- Otherwise deny or make housing unavailable
- Discriminatory acts under Section 818 (coercion, Etc.)
- Failure to make reasonable accommodation

5. The alleged violation occurred because of:

- Handicap

6. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

Properties located in Arizona
Phoenix, et. al., AZ

7. **Respondents:**

State of Arizona
c/o Arizona Attorney General's Office
2005 N. Central Ave.
Phoenix, AZ 85004-2926

8. **The following is a brief and concise statement of the facts regarding the alleged violation:**

The complainant is the Arizona Recovery Housing Association (AzRHA), whose mission includes supporting and advocating for members who run housing programs for disabled persons related to substance abuse that do not provide treatment. The respondent is the State of Arizona.

The respondent has enacted a statute that regulates operators of housing programs for disabled persons related to substance abuse that do not provide treatment by imposing on these operations greater licensing fees and imposing fees and conditions that are disparately greater than the fees and conditions imposed on assisted living facilities or other providers of housing for the disabled that provide treatment, medical and personal care services along with housing.

The licensing purpose is stated to be to protect the welfare of the sober living house residents. However, no complaints have ever been filed for such misconduct, and the sober living houses that only provide a place to live and do not provide medical care, food, personal care, medication assistance, or treatment as assisted living facilities typically provide do not warrant this level of regulation.

The licensing requirements include that there be a house manager, this manager have CPR resuscitation training, the manager resides at only one sober living home, there is a complaint procedure (including those from the neighborhood) that must document the complaints, complaints records must be kept to establish the responses the sober living home operator has made on the complaints, that the house has addressed any problems related to insuring to the requirements for residents and visitors related to parking or noise emanating from the home, cleanliness of the public space near the home, loitering in front of the home or nearby homes, and that these rules have to be known to the residents and enforced. These conduct requirements are based upon stereotypical characteristics of sober living house residents not based on objective data, and are commonly produced as the nature of the objections to the location of sober living homes in neighborhoods opposed to use permits for these facilities.

The respondent imposed a flat licensing fee of $500 per house plus an additional fee of $100 per bed for housing-only facilities for those with substance abuse issues, which are typically 10 beds or less. For a ten-bed recovery housing facility the fee would be

$500 plus ($100 x 10 [beds]) or $1500. Assisted living facilities that provide treatment have a flat licensing fee of $280 plus $70 for each bed. This means for a ten-bed assisted living facility the fees would be $280 + ($70 x 10 [beds]) = ($280 + $700) = $980. This $520 difference in fees is an unreasonable and unnecessary barrier to the operation of housing programs for disabled persons related to substance abuse that do not provide treatment.

AzRHA requested a reasonable accommodation of the waiver of the fees. This request was denied.

On March 9, 2020, an agent of the complainant was approached by Amber Norman, Arizona Department of Health Services staff member and told that they would have to either pay the licensing fee required by the statute by March 18, 2020 or be fined $1000/day and be subject to a cease and desist order.

9. The most recent date on which the alleged discrimination occurred:

March 09, 2020, and is continuing.

10. Types of Federal Funding Identified:

- CDBG

11. The acts alleged in this complaint, if proven, may constitute a violation of the following sections:

804a, 818, and 804f3B of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

Section 504 of the Rehabilitation Act of 1973
Americans with Disabilities Act of 1990

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

03/18/20

Date

DUANE MANLEY
12HA BOARD CHAIR

N O T E : HUD WILL FURNISH A COPY OF THIS COMPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

DHS 5YRR on 9 A.A.C. 12, Articles 1 & 2

1 message

Angelica Trevino <angelica.trevino@azdhs.gov> Mon, Oct 21, 2024 at 4:08 PM
To: GRRC - ADOA <grrc@azdoa.gov>
Cc: Simon Larscheidt <simon.larscheidt@azdoa.gov>, Stacie Gravito <stacie.gravito@azdhs.gov>

Hello,

RE: Supplemental information for 5YRR on 9 A.A.C. 12, Articles 1 & 2 (in response to comments raised at the 10/1/24 GRRC Meeting)

At the October 1, 2024 GRRC Meeting, the Arizona Department of Health Services (Department or ADHS) was asked to address the following points, mainly in response to the letter the Council received from Dukes Law Firm ("Dukes Letter").

- **Question regarding the Five-Year-Review (5YRR) not including a 2020 complaint made to the U.S. Department of Housing and Urban Development (HUD)**

A.R.S. § 41-1056(A)(2) states the following:

2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

It has been the Department's understanding that criticism received and recorded in the 5YRR is in direct relation to the rules and not tied to appeals of enforcement actions, litigation, complaint intakes related to ADHS-licensed facilities, and/or other legal matters. As such, the 2020 HUD complaint referenced in the Dukes Letter is a legal matter pertaining to the entire statutory scheme, not a particular rule. While ADHS does receive complaints and comments during the rulemaking process related to statutory authority, a 5YRR is meant to analyze gaps in the rules themselves, not the statutes underlying them, which is beyond the scope of the agency's authority in a 5YRR.

The HUD complaint mentioned in Dukes Letter is a legal complaint questioning the constitutionality of licensing and regulation of sober living homes pursuant to the statutes passed in 2019. As such, the Department believes that not referencing the 2020 HUD complaint as part of the 5YRR is appropriate. Moreover, and for the Council's awareness, there has not been a resolution to the HUD complaint that requires the Department to make recommendations or changes to the rules (see, for example, A.R.S. § 36-2062(A), which is the current statutory requirement mandating the Department to promulgate rules). Should there be a circumstance that mandates changes to the Department's rules, including any change to existing statutes, the Department will take the appropriate action, as it does with all such matters.

- **Comment indicating that the Five-Year-Review Report does not identify corresponding laws.**

A.R.S. § 41-1056 (A)(10) states the following:

"A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law."

The 5YRR is correct because there are no corresponding federal laws applicable to the rules in 9 A.A.C. 12, which are based on state statutes. All entities licensed by the Department should be aware of and comply with any federal laws that apply to the licensee and are beyond requirements imposed by the Department's rules.

- **Comment regarding what documentation will be necessary for the Department to determine that a sober living home manager has maintained sobriety**

The Dukes Letter states that "*the SLH Report fails to include an analysis of existing statutes that authorize ADHS's proposal of new rules*" and references the section of the 5YRR in which the Department analyzes A.A.C. R9-12-201.

A.R.S. § 41-1056(A)(3) states the following:
"Authorization of the rule by existing statutes."

The 5YRR is an analysis of the rules, which among other things, includes if the rule is effective in achieving the objective of the rule; if the rule is consistent with other statutes or rules; and if the rule is clear, concise and understandable. At this time, the Department is not conducting a rulemaking and has not proposed new rules or revisions to rules. If the Department requests and receives approval from the Governor's Office, pursuant to A.R.S. § 41-1039, the Department will work with all stakeholders to make revisions to address those gaps so any rule changes will be mutually agreeable and enforceable.

The provision referenced in the Dukes Letter is part of the Department's 5YRR analysis and identifies a gap in the current rules that pertains to the sober living home manager's sobriety. The rules currently require managers to maintain sobriety for one year. The requirement of sobriety is not new for sober living homes. However, the rules do not currently make clear how a manager would prove that they have been sober for at least one year. The Department has received and investigated complaints where it found certain managers had not been sober, or not maintained sobriety. Those situations created a direct risk to the health and safety of sober living home residents and resulted in enforcement actions by the Department. The Department recognizes the importance of addressing this gap, including not only protecting the health and safety of sober living home residents, but also making sure the requirements are clear for the licensees and their managers. This gap, and how the rules can potentially address it, will be addressed during the rulemaking period, where options and comments received from stakeholders will be fully considered.

- **Comment inquiring why the Department did not conduct outreach to stakeholders for the drafting of this 5YRR**

A.R.S. § 41-1056 outlines the process for this 5YRR and it does not require an agency to solicit feedback or comments from the public for purposes of the agency's review of the rules (5YRR).

That being said, the Department strives to be transparent throughout its 5YRR process. The public may view a list of the 5YRR's that the Department will be working on for the year. Though not required, the Department lists on its website the 5YRR in two locations: Under the "Five-Year-Review Reports" tab and under the "Regulatory Agenda" tab. Additionally, the Department website also lists all the reports that have been completed by year.

Members of the public who would like to further engage with the Department (questions, comments, submission of written criticism of rules), may email ACR@azdhs.gov or may sign up for email updates.

- **Comment/inquiry regarding two (2) sober living homes bills that "did not pass" during the 2024 legislative session**

During the last legislative session, the Department was aware of at least two (2) bills related to the regulation of sober living homes (**SB1361** and **HB2317**). Both bills involved several significant statutory changes.

Some notable changes proposed in **SB1361** included the following: if a municipality has a zoning ordinance that restricts the distance of sober living homes, they must be granted reasonable accommodation under the Fair Housing Act; included several provisions regarding patient brokering related to sober living homes and substance use disorder treatment facilities, including that patient brokering would be a class 3, class 4 or class 6 felony; added the definition of close friend; redefined sober living homes to have a broader impact of who would be required to be licensed; required policies and procedures for activities that promote independent living and life skills development; required policies and procedures for activities directed toward recovery from substance use disorders; required documentation from the local jurisdiction verifying compliance with local zoning; required all sober living homes to be inspected in a specific timeframe; increased the civil penalties from $500 to $1,000 for each violation and for each resident/person impacted by the violation; expanded the Department's authority to seek enforcement action if the facility commits a felony and/or refuses to permit the Department to inspect the facility; provided the Department the authority to deny an application if the sober living home sells or changes ownership during an enforcement action, and/or the owner of the sober living home has a serious licensing history; required employees of a sober living home to obtain a fingerprint clearance card; and required the Department to file a report to the Senate Health and Human Services Committee data related to complaints and enforcement actions of licenses and unlicensed sober living homes.

Some of the notable changes proposed in **HB2317** included the following: redefined sober living homes to have a broader impact of who would be required to be licensed; required policies and procedures if a license was suspended or revoked; required documentation from the local jurisdiction verifying compliance with local zoning; expanded the Department's authority to seek enforcement action against an unlicensed sober living home if they are affiliated with a licensed healthcare institution and participating in fraudulent activities; requirement of all sober living homes to be inspected within a specified time frame; required all complaints to be investigated within 30 calendar days; increased civil penalties from $500 to $1,000 for each violation; required the Department to notify local jurisdictions of any applications for licensure of a sober living home; and required the Department to file a report to the Senate Health and Human Services Committee data related to complaints and enforcement actions of licensed and unlicensed sober living homes.

In the 5YRR, there are only two items which have similarities to SB1261 and HB2317 (the Department also correctly *did not* include these bills as written criticism to be addressed by the 5YRR). The Department included an analysis of R9-12-103 and reasoned that it believes the current rule to be ineffective. Currently, the Department requires the applicant to attest they are in compliance with local zoning ordinances, building codes, and fire codes. However, the Department has found that applicants have provided false or misleading attestations, either intentionally or unintentionally, which results in the Department denying the application. A denial of the application utilizes additional resources and cost on both on the applicant and the Department if the applicant appeals the denial. It would significantly benefit the applicant to reach out to the local jurisdiction first and obtain documentation of compliance so the likelihood of their application being denied by the Department for this reason will be reduced or eliminated. The Department also included an analysis of R9-12-107 in that it would benefit from being amended in order to improve its effectiveness. The Department currently does not have the authority to prevent or deny an individual/entity from obtaining a sober living home license even if they have a serious licensing history in Arizona or in another state that involved circumstances that posed a direct risk to the health or safety of residents, including those with a serious negative outcome such as death of an individual.

Best,

Angie Trevino
Senior Rules Analyst
ARIZONA DEPT OF HEALTH SERVICES

150 N. 18TH Avenue, Suite 200
Phoenix, AZ 85007

480.589-0298

www.azdhs.gov

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DUKES LAW, PLLC

5527 N. 25th Street
Phoenix, AZ 85016
602.320.8866

VIA EMAIL

Governor's Regulatory Review Council
150 North 18th Avenue
Phoenix, AZ 85007

November 4, 2024

RE: Follow-Up Documentation and Objections to Department of Health Services ("ADHS"), Title 9, Chapter 12, Articles 1 and 2, Sober Living Home Rules Five-Year Review Report revised October 21, 2024 (the "SLH Report")

Dear Council Members:

On behalf of the Alliance of Recovery Residences, an Arizona non-profit corporation (the "**Alliance**"), we respectfully request that the SLH Report be removed from the consent agenda at the Governor's Regulatory Review Council (the "**Council**") meeting on November 5, 2024. The SLH Report was not updated by ADHS to address the statutory deficiencies raised in the Alliance's correspondence dated September 30, 2024 and continues to be non-compliant with A.R.S. § 41-1056. Furthermore, the SLH Report fails to address the Council's instructions and requests for information at the October 1, 2024 hearing. We respectfully request that the Council vote to return the SLH Report to ADHS with instructions to address the four (4) requests for information raised by Councilmember Lashgari at the October 1, 2024 meeting (as detailed below).

It is unfortunate that ADHS has taken a somewhat adversarial approach to revising the SLH Report or providing a copy of the Report to the Alliance and the Arizona Recovery Housing Association ("AzRHA") before its resubmittal to the Council. The Alliance membership is comprised of several sober living home operators who are recognized stakeholders in these proceedings, and AzRHA is the official certifying agency who works closely with ADHS to inspect and license sober living homes throughout the state. At the October 1st Council hearing, the ADHS representative confirmed that these organizations are some of the Department's "biggest stakeholders" and that they should "be at the table to discuss what would be the most appropriate language for requirements."[1] Despite this acknowledgment, we later received emails from the Arizona Attorney General representing ADHS which stated that the "Department has not agreed to produce to you and the unnamed members of the Alliance of Recovery Residences a copy of the 5 year report before it is re-submitted to GRRC" and that "ADHS has no obligation to submit this Report to any entity other than GRRC."[2]

[1] *See* Video of October 1, 2024 GRRC Meeting at 21:26.
[2] *See* Emails dated October 4 and 11, 2024 attached hereto as **Exhibit "1".**

Neither the revised SLH Report nor the October 21, 2024 email from Angie Trevino of ADHS was sent to the Alliance or AzRHA in advance of the November 5th Council meeting (despite our requests for the information in advance). Once the 5-Year Report was posted for the Council's study session last week, the Alliance realized that no changes were made by ADHS to address the concerns raised.

To be clear, we offer our feedback due our unique role and desire for a collaborative relationship with ADHS for the betterment of our industry and the health, safety and welfare of the sober living home residents that we serve. We are justifiably concerned that the SLH Report:

(i) suggests a zoning and building code verification requirement taken from failed legislation during the 2024 legislative session, when the current zoning and building code attestation to be completed by the applicant on the ADHS license application was created to help prevent discrimination by local jurisdictions (we have been involved in several cases in local Arizona jurisdictions where cities and towns have unlawfully imposed cost-prohibitive fire sprinkler requirements on this ambulatory disabled class, prohibited sober individuals from living as a family in apartments or condominiums in multi-family residential districts, limited the number of disabled residents in a home to less than the number of non-disabled individuals who could live as a family in a home, etc).

(ii) suggests documentation verifying a house manager's sobriety for a minimum of one year when a sober living home operator cannot lawfully inquire into the length of an applicant's sobriety during the application process, and the applicant would have no way of documenting such sobriety due to current drug and alcohol testing limitations (To our knowledge, the only way that a house manager could present verifiable sobriety for one year would be in very rare circumstances where they are: (a) a probationer being tested two times a week for a year or (b) coming from a year-long treatment program where testing was performed on a frequent, weekly basis); and

(iii) fails to identify or address the current HUD complaint against ADHS challenging the good neighbor policies and procedures in A.A.C. Section 9-12-201.B.2 and the licensing fee amounts set forth in A.A.C. Section R9-12-103.A.6.

I. Council's Authority to Return the SLH Report to ADHS Again.

As set forth in our September 30th letter, Section R1-6-305 of the A.A.C. authorizes the Council to vote to return a five-year review report after identifying the manner in which the report does not meet the standards of A.R.S. § 41-1056(A). If a report is returned, the state agency is required to submit a revised report with a letter responding to the Council's explanation for return of the five-year report and an explanation as to how the changes ensure that the report meets the standards of 41-1056(A).

ADHS did not revise the SLH Report to address the questions and instructions issued by the Council at the October 1, 2024 meeting, as evidenced below:

- Councilmember Bentley: "*I was just looking at the letter that was sent to us from . . . the Association, and I also have a little bit of a concern. I know one of the things that they mentioned . . . is that the*

Department is seeking to create a rule saying that sober living house managers need to administratively verify that they maintain sobriety for a year and that gave me a little pause for concern because they are saying there is no rule requirement that allows them that authority and that it might violate some federal labor laws so I don't know if the Department is prepared and can speak to that."

- Note: ADHS did not provide an analysis of whether the one-year manager sobriety requirement or documentation proposal would violate federal labor laws or would be feasible given current drug and alcohol testing technology.

- Madame Chair Klein: "*We received this letter just a day before the voting session. To your knowledge, did this group receive . . . were they engaged as part of the 5-year review report? Did they receive any notice that this process was going on*?"

- Councilmember Thorwald: "*Could you tell me what they knew besides that they knew you were going to be submitting a 5-year rule review? When did they know the content of what you were submitting? . . . And again, my question was when did they receive the final version? . . . Again, I only ask that because you were saying they had been involved the whole time and they were a major party involved. Given that you already had these discussions and were informing them of these things and that they are your major group, that's why I was asking you when they had received the documentation. So, since they did not receive the documentation at an earlier date, I can understand why the document that they sent would have come at the last moment*."

  - Note: The Department again refused to provide a copy of the revised report to the Alliance or AzRHA in advance of the Council's study session and November 5th hearing scheduled in this matter. *See* **Exhibit "1"** attached hereto.

- Councilmember Lashgari: "I have four questions that would be helpful if the Department could provide follow-up on for us . . .

  - "*The first is regarding criticism of the rules or any complaints. I think that, for our consideration, especially from significant stakeholders, if a criticism or complaint is raised regardless of the outcome or determination that may come, I think that feedback is helpful. So if the agency could review, specific to these rules . . . if they have received negative comments, criticisms, or feedback that may be helpful to our understanding of stakeholder insights on the rules, that would be helpful*."

    - Note: The revised 5-Year Report does not provide this information requested by Councilmember Lashgari. Instead, the 5-Year Report continues to incorrectly state that the Department "received no written criticism of the rules in the last 5 years."

      The email from Ms. Trevino of ADHS dated October 21, 2024 inaccurately justifies the Department's decision to not address this information because the "HUD complaint reference in the Dukes letter is a legal matter pertaining to the entire statutory scheme, not a particular rule" and "there has been no resolution to the HUD complaint that requires the Department to make recommendations or changes to the rules." The HUD complaint does not challenge the entire statutory

scheme. It challenges the good neighbor policies and procedures in A.A.C. Section 9-12-201.B.2 and the licensing fee amounts set forth in A.A.C. Section R9-12-103.A.6.

A.R.S. 41-1056.A.2 requires ADHS to provide an analysis of "written criticisms of the rule received during the previous five years . . ." It is unclear how a HUD complaint regarding two specific ADHS rules would fail to meet this disclosure requirement. A lawsuit is, quite possibly, the most formal version of a written criticism. There is no statutory requirement or limitation that the written criticism be "resolved" in order for it to be included in the SLH Report.

- "*My second question is . . . for a legal opinion if A.R.S. Section 41-1056(A)(12), which was related to the sobriety requirement for a manager, is in fact legal and does it violate any of the federal rules or if any of the other rules are compliant with federal rules similar to the Fair Housing Act or anything else that was raised in the letter. A legal opinion on that for review at least by the Administration would be helpful for me*."

  - Note: ADHS did not address this request for information and a legal opinion in the SLH Report. The Department, instead, indicated in the SLH Report that "there are no corresponding federal laws." The SLH Report also continues to suggest that R9-12-201 be revised to require the licensee to obtain documentation verifying that the manager has maintained sobriety for at least one year.

    In the email from Ms. Trevino of ADHS dated October 21, 2024, the Department provides a 2 sentence conclusory statement that the SLH Report is correct because there "are no corresponding federal laws applicable to the rules in 9 A.A.C. 12. . . ." This conclusion is wholly inaccurate. The Fair Housing Act has been deemed to apply to sober living home licensing rules and regulations across this county. Moreover, federal and state labor employment laws apply to the hiring process and documentation related to sober living home employees and managers.

- "*My third question is documentation regarding the compliance item that was brought up in the letter and whether the Department had some indication of what kind of verification or documentation would be satisfactory*."

  - Note: ADHS does not disclose what kind of verification or documentation is being contemplated. Instead, the email from Ms. Trevino of ADHS dated October 21, 2024 indicates that the Department will work with all stakeholders to make revisions" during the "rulemaking period, where options and comments received from stakeholders will be fully considered." This response is concerning given the Department's refusal, thus far, to work with stakeholders during this 5-year review process and the email correspondence from the AG's office attached hereto as Exhibit "1". It also does not answer the question posed by the Councilmember.

- "*And finally, as we talked about stakeholder outreach, if the Department can provide a list of which stakeholders they did discuss the 5-year report, specific to the content of the 5-year report with the new rules of changes . . . that would be helpful*."

- Note: ADHS did not provide a list of the stakeholders with whom they discussed the SLH Report or the specific content discussed. The email from Ms. Trevino of ADHS dated October 21, 2024 states that the Department listed on its "website the 5YRR in two locations. . . ." Yet, the Alliance can attest that the SLH Report was never made available at those two locations on the ADHS website. When AzRHA requested a copy of the SLH Report prior to the October 1, 2024 Council meeting, they were directed to the ADHS website, but there was no link or information available regarding the SLH Report.

For these reasons, we respectfully request that the Council vote to return the SLH Report to ADHS with instructions to address the four (4) requests for information raised by Councilmember Lashgari at the October 1, 2024 meeting.

Very truly yours,

/s/ Heather N. Dukes

Heather N. Dukes, Esq.
602.320.8866 | hdukes@dukeslawaz.com

CC: Ms. Jessica Klein, Chair and ADAO General Counsel (via email)
Ms. Elizabeth Alvarado-Thorson, ADAO Director (via email)

Enclosure

EXHIBIT 1

Outlook

RE: October 1, 2024 Letter to ADHS

From LaMagna, Patricia <Patricia.LaMagna@azag.gov>
Date Fri 10/11/2024 6:03 PM
To Heather Dukes <hdukes@dukeslawaz.com>

Ms. Dukes,
The Department will send the 5 year review to GRRC as required for their consideration.
You and any other member of the public can review it one week before the November 5, 2024 when it is posted for public review.
As noted previously, the Department's obligation under A.R.S. 41-1056 regarding the 5 year review is to GRRC.

Patricia Cracchiolo LaMagna
Assistant Attorney General
Health Unit Chief Counsel

Arizona Attorney General Kris Mayes
15 S 15th Ave
Phoenix, AZ 85007
Mailing Address:
2005 N. Central Avenue
Phoenix, AZ 85004
Desk: 602-542-8854
patricia.lamagna@azag.gov
http://www.azag.gov

From: LaMagna, Patricia
Sent: Friday, October 04, 2024 6:07 PM
To: 'Heather Dukes' <hdukes@dukeslawaz.com>
Subject: RE: October 1, 2024 Letter to ADHS

Ms. Dukes,
I just want to be clear that the Department has not agreed to produce to you and the unnamed members of the Alliance of Recovery Residences a copy of the 5-year report before it is re-submitted to GRRC.
ADHS has no legal obligation to submit this Report to any entity other than GRRC. In fact, A.R.S. 41-1056 contemplates the requirements of an agency to GRRC.
Nonetheless, the Department has not made a decision, but will reach out next week.

Patricia Cracchiolo LaMagna
Assistant Attorney General
Health Unit Chief Counsel

Arizona Attorney General Kris Mayes
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From: Heather Dukes <hdukes@dukeslawaz.com>
Sent: Friday, October 04, 2024 3:11 PM
To: LaMagna, Patricia <Patricia.LaMagna@azag.gov>
Subject: Re: October 1, 2024 Letter to ADHS

Patricia:

Thank you for sending confirmation that the sober living home addresses were removed from the ADHS website this week. I appreciate it.

We look forward to receiving the revised 5-year report next week. Have a good weekend.

Sincerely,

Heather N. Dukes, Esq.
DUKES LAW, PLLC
5527 N. 25th Street
Phoenix, AZ 85016
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Email: hdukes@dukeslawaz.com

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From: LaMagna, Patricia <Patricia.LaMagna@azag.gov>
Sent: Wednesday, October 2, 2024 2:49 PM
To: Heather Dukes <hdukes@dukeslawaz.com>
Subject: October 1, 2024 Letter to ADHS

Good afternoon,
I am counsel for the Arizona Department of Health Services and I am in receipt of your October 1, 2024 letter to my client ("Letter")

Yesterday, just prior to receipt of the Letter, the Department removed the spreadsheet from its website and there is no longer access to the addresses of licensed sober living homes.
The Department's website overall was updated on September 1, 2024. Apparently, the provider databases are automated to gather data from licensed facilities.
The sober living home data was gathered including addresses mistakenly, despite the program having believed that the addresses were not part of the data collection.

Further, Department will be sending you a response to the request regarding the sober living home five-year review report by early next week.

Thank you,
Patricia

Patricia Cracchiolo LaMagna
Assistant Attorney General
Health Unit Chief Counsel

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